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mt **TRANSCRIPT OF RECORD.**

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 47. 186 29.

MARTIN B. HAYES; APPELLANT,

v.s.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

FILED OCTOBER 31, 1894.

(15,720.)

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(15,720.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 477.

MARTIN B. HAYES, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 UNITED STATES OF AMERICA, |
 Territory of New Mexico. }

Be it remembered that heretofore, to wit, on the 24th day of September, A. D. 1892, Martin B. Hayes, by his attorney, John H. Knaebel, filed in the office of the clerk of the court of private lands claims of the United States in and for the Territory of New Mexico a petition, in which the said Martin B. Hayes is plaintiff and The United States of America is defendant; which petition is in the words and figures following, to wit:

2 To the Honorable Joseph R. Reed, chief justice of the United States court of private land claims:

The undersigned, Martin B. Hayes, a resident of the city of Denver, county of Arapahoe, and State of Colorado, by his petition complaining of The United States of America, defendant, shows unto the said court as follows—that is to say:

On the 3rd day of March, 1825, the Republic of Mexico, by the governor and departmental assembly of the Territory of New Mexico, acting upon the petition to that end of Antonio Chaves, a Mexican citizen, granted to him a certain tract of land theretofore part of the public domain of the said Republic; which tract of land is now wholly situated in the county of Socorro, in the present Territory of New Mexico, and is bounded and described as follows—that is to say:

A certain tract of land bounded on the north by a straight line including the point of the beginning of the small table-land of the Alamillo and extending from the river called the Rio Grande del Norte to and including the spring known as La Jara spring, on the east by the said river, on the south by a straight line running through a small forked cedar tree in the middle of the bend in the Pablo Garcia ranch, commonly so called, the said tree being on the same side with the highway going to Socorro, on the side of the meadow; the said south boundary line extending from the river due west until it intersects a line drawn due south from the said La Jara spring, and on the west by the said last-mentioned line, the area of land contained within the said tract being one hundred and thirty thousand one hundred and thirty-eight acres and ninety-eight one-hundredths of an acre, common measurement of the United States of America.

The said granted tract of land has been correctly surveyed by the said United States, under the direction of the surveyor general for

3 New Mexico, and the field-notes and plat of such survey are part of the archives in the office of the said surveyor general at Santa Fé. A map of the said granted tract of land, showing its extent and boundaries, is herewith filed.

Juridical possession of all and singular the said tract of land was, on the 20th day of April, 1825, duly delivered to the said grantee, Antonio Chaves, pursuant to the terms of the said grant, by Juan Francisco Baca, constitutional alcalde of the jurisdiction of San

Miguel del Socorro, thereunto by the terms of the said grant commissioned by the said governor and departmental assembly, and the said juridical officer, with his attendant witnesses, Vicente Silba and Julian Ocaña, duly executed his act of juridical possession accordingly.

The said petition of Antonio Chaves was read and considered by the said governor and departmental assembly in the public session of the said assembly held at Santa Fé on the 16th day of February, 1825, and was on that day duly recorded in Book Two of the Journal of the said assembly, on the 41st page thereof, and on the said day, at the said session, the said assembly, by its order, made upon the said petition and recorded in the said book next after the said record of the said petition, referred the said petition to the said governor (or political chief) to ascertain whether the land so petitioned for pertained to the settlements of Socorro and Sevilleta, and whether it was embraced in the same, and also whether, although it pertained to the said settlements, it might, on account of their great extent, be granted to the petitioner without injury to a third party.

Pursuant to the said reference, the said governor or political chief, by his report to the said assembly, dated on the 25th day of February, 1825, rendered his opinion that no obstacle existed to the granting of the said petition, and that therefore the grant so requested should be made at once.

4 Thereupon the said governor and departmental assembly, in the public session of the said assembly held at Santa Fé on the 3rd day of March, 1825, after reading and considering the said report, which was then and there presented by the said governor, resolved to make and did make to the said Antonio Chaves a grant of the said tract of land, and ordered the said instrumental proceedings relating to the said grant to be kept as part of the archives in the office of the secretary of the said assembly, and the corresponding testimonio to be furnished to the said Antonio Chaves to serve him as his title, and directed the said grantee, Antonio Chaves, with such testimonio, to present himself before the said alcalde of Socorro in order to be placed in possession of the said granted tract of land; which proceedings of the said governor and departmental assembly appear of record in Book Two of the said Journal, on the 43rd page thereof.

Pursuant to the terms of the said grant, Juan Bautista Vigil, the secretary of the said departmental assembly, did, on the fifth day of March, 1825, furnish the said Antonio Chaves with a testimonio of his said granted title, consisting of a copy, by the said secretary duly certified, of the said petition of Antonio Chaves, the said report of the said governor or political chief, and the said grant and recorded proceedings, and thereafter, on the 20th day of April, 1825, the said Antonio Chaves presented himself, with the said testimonio, before the said alcalde, commissioned juridical officer as aforesaid, and duly received from him due livery of seisin and possession of the said granted tract of land.

Copies, in English and Spanish, of the said testimonio, embracing copies of all the above-described original documents and records,

5 are filed with and as part of this petition, and to the said copies your petitioner refers for a more particular statement of the contents and terms of the said several documents and records.

Neither the said petition of the said Antonio Chaves nor the said report of the said governor, nor the said grant, nor the said act of juridical possession nor the said testimonio, nor any original document or documents, record or records, whatever constituting or creating the said grant is or are in the possession or under the control of your petitioner, but all of the same are in the possession of the defendant, kept in its said archives at Santa Fé.

Immediately upon the livery of seisin and possession of the said granted tract of land to the said Antonio Chaves, as aforesaid, he held and claimed and thereafter, until his death, always held and claimed the same as his private property, in fee-simple absolute, free from all conditions or charges, actually residing upon, cultivating and improving the same, and occupying the same openly, continually, notoriously, peaceably, and exclusively; and dying actually seised and possessed thereof and leaving no issue him surviving, his widow, Monica Pino de Chaves, his only heir and assign, having become his only legal representative and successor in title and estate, by operation of law as well as by contract, immediately thereupon entered into the same tract of land, claiming to own the same in fee-simple absolute, and continued the seisin and possession thereof in privity with her said deceased husband, and thereafter she actually resided upon, cultivated and improved the same, and occupied the same under the said claim openly, continually, notoriously, peaceably, and exclusively, until the 26th day of October, 1850, when she duly conveyed all and singular the said tract of land, upon a pecuniary consideration, to Rafael Luna, Anastacio Garcia, and Ramon Luna, in fee-simple absolute, by her written conveyance, bearing date on that day and by her duly signed,

6 executed, and delivered, and upon such transfer she delivered seisen and possession of all and singular the said tract of land to the said three purchasers.

Thereupon the said purchasers continued the same seisin and possession of the said tract of land in privity with their said predecessors in title, and cultivated, improved, and occupied the same and claimed the same in fee-simple absolute, openly, continually, notoriously, peaceably, and exclusively, until the death of the said Rafael Luna and Ramon Luna respectively, and thereafter the heirs of the said Rafael Luna and Ramon Luna, together with the said Anastacio Garcia, continued the same seisin and possession, and cultivated, improved, occupied, and claimed the said tract of land until they sold and conveyed the same, by divers deeds and instruments of conveyance by them duly executed and delivered, upon pecuniary considerations, to Laura A. Bond, Charles D. Arms, and Latham L. Higgins; whereupon, seisin and possession thereof having by the said heirs and the said Anastacio Garcia been duly delivered to the purchasers last named, they continued the same seisin and possession, and improved, occupied, and claimed the said tract of

land until they sold and conveyed the same by a certain deed of conveyance by them duly executed and delivered; upon a certain pecuniary consideration, to your petitioner; whereupon seisin and possession thereof having by the said last-named vendors been delivered to your petitioner, he continued and he has always since continued the same seisin and possession, and he is now the actual occupant and owner of all and singular the said tract of land.

No person or persons is or are in possession of the said tract of land or any part thereof or claims or claim the same or any part thereof, to the knowledge, information, or belief of your petitioner,
7 otherwise than by his lease or permission, and there is not, to his knowledge, information, or belief, any claimant of the said lands or any part thereof adverse to your petitioner.

Your petitioner claims that his title to the said tract of land and each and every part thereof is complete and perfect, and that the said grant was complete and perfect before and at the time of the cession of New Mexico to the United States of America.

His said claim has never been confirmed by Congress, nor has it been considered or acted upon by Congress or the authorities of the United States, save as hereinafter particularly stated—that is to say, upon the application of the said Ramon Luna and Anastacio Garcia, made to the United States surveyor general of New Mexico, namely, James K. Proudfoot, the said surveyor general examined and considered the validity, extent, and other particulars of the said grant, and thereupon, by his favorable report, number 79, dated on the 5th day of January, 1874, he recommended Congress to confirm the said grant.

Upon such recommendation a bill for the confirmation of the said private land claim was introduced into the House of Representatives at the first session of the 47th Congress and referred to its Committee on Private Land Claims. That committee referred the said matter to the Secretary of the Interior for information and his opinion.

The Secretary, in his reply to the said committee, under date of May 15, 1882, stated that he had referred the said matter to the Commissioner of the General Land Office, whose favorable report he, the said Secretary, therewith returned to the said committee, and he added that the said Commissioner (Hon. N. C. McFarland) "entertains no doubt of the authority of the original title papers in the case or of the grant being a valid and legal one."

Thereupon the said committee reported back the said
8 bill (H. R. 5691) with the recommendation that it pass as amended.

Your petitioner is informed and believes that a subsequent surveyor general (Hon. George W. Julian) made an *ex parte* adverse report to the Commissioner of the General Land Office (Mr. Sparks) upon the said private land claim, and the said Commissioner in some communication to Congress concurred in the said adverse report; but both the said adverse report and the said communication were made in a perfunctory and unjudicial spirit and without any lawful authority.

Your petitioner therefore prays that the validity of his-said title and claim may be inquired into and decided by this honorable court, and that he may have all the relief in the premises which the said court is competent to afford and decree by virtue of the act of Congress under which it is organized.

MARTIN B. HAYES,
By JNO. H. KNAEBEL,
His Agent and Attorney.

JNO. H. KNAEBEL,
Attorney for Petitioner, Santa Fe, N. M.

(Endorsed:) No. 37, F. No. 1. Filed Sept. 24, 1892. Served Oct. 3, 1892.

9 And be it further remembered that on the same day, to wit, the 24th day of September, A. D. 1892, a paper was filed with the said petition and marked Plaintiff's Exhibit No. 1; which said Exhibit No. 1 is in the words and figures following, to wit:

10 PLAINTIFF'S EXHIBIT NO. 1.

43rd Congress, } House of Representatives. { Ex. Doc.
1st session. } } No. 149.

Land Grant to Antonio Chavez.

Letter from the Secretary of the Interior transmitting, in compliance with the act of July 22, 1854, the transcript of the land grant to Antonio Chavez, being private land claim reported as No. 79.

February 6, 1874.—Referred to the Committee on Private Land Claims.

February 24, 1874.—Ordered to be printed and recommitted.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., February 4, 1874.

SIR: Pursuant to the eighth section of the act approved 22nd July, 1854 (10 Stat., 308), I have the honor to transmit herewith for the consideration of Congress transcript of the "land grant to Antonio Chavez, being private land claim reported as No. 79, for the Arroyo de San Lorenzo tract in Socorro county, New Mexico," and recommended for confirmation by the surveyor general of said Territory.

I am, sir, very respectfully your obedient servant,

C. DELANO, *Secretary.*

Hon. J. G. Blaine, Speaker of the House of Representatives.

Transcript of land grant to Antonio Chavez, being private land claim reported as No. 79, for the Arroyo de San Lorenzo tract, in the county of Socorro, New Mexico; date of grant, March 3, 1825; reported by the United States surveyor general January 5, 1874.

To the Hon. James R. Proudfit, surveyor general of the Territory of New Mexico:

11 Your petitioners, the assignees of the heirs of Antonio Chavez, deceased, most respectfully represent that in the year A. D. 1825 the governor and departmental assembly of the Territory to New Mexico made to said Antonio Chavez, then in full life, a grant of a certain tract of land lying and being situate in the present county of Socorro, in the Territory of New Mexico, and bounded on the north by the beginning or commencement of the mesita (little table-lands) of Alamillo, on the east by the Rio del Norte (Rio Grande) river, on the south by a small forked cedar tree in the middle of the bend of the ranch of Pablo Garcia, now deceased, and on the west by the spring of La Jaya, the juridical possession of which was given to the said Antonio Chavez on the 20th day of April, A. D. 1825; all of which will more fully and at length appear by reference to Book Second, page 41 and following thereof, of the proceedings of the said department assembly for said year, now on file, as your petitioners are informed, in the office of the said surveyor general, as also by a certain certified copy of the said record and proceedings made at the time thereof by the then secretary of New Mexico, and the act of said juridical possession and the translations thereof, filed herewith, marked respectively Exhibits A, B, C.

That said grant was made in accordance with the laws and customs then in force in the Territory of New Mexico; that the said grantee immediately entered into the possession thereof and up to the day of his death, which happened several years thereafter, continued in the peaceable, quiet, and uninterrupted possession thereof, living on, cultivating, and pasturing the same.

That after the death of the said Antonio Chavez, his wife and children continued peaceably, uninterruptedly, and quietly to possess, hold, cultivate, and pasture the same (except when interrupted by Indian hostilities) until about the year A. D.

12 1850, when they sold and disposed of the said tract of land to your petitioners, Anastacio Garcia, Ramon Luna, and one Rafael Luna, since deceased, but whose heirs are a portion of your petitioners.

That from the date of said last-mentioned sale your petitioners and said Rafael Luna to the day of his death continued to hold, possess, cultivate, pasture, and occupy the same, and still continue to do so; that the right of your petitioners and those under whom they claim their title as aforesaid to possess, occupy, and hold the said tract of land has at all times been respected and acknowledged by every one since the date of the said grant. A sketch map of the same is herewith filed, marked E, and made a part of this petition.

Owing to the irregular form of the said grant, your petitioners are unable to make any estimate that might approximate to the area thereof, they also not being acquainted with the measurements, distances, and subdivisions of land in the United States, there never having been any survey or measurement thereof made.

Your petitioners further state that they are all residents of the Territory of New Mexico. They therefore ask that the said grant of land (known as San Lorenzo) may be confirmed to them and the legal representatives and assigns of the said original grantee and his heirs.

RAMON LUNA,

ANASTACIO GARCIA,

*For Themselves and the Heirs of Rafael Luna
and all Others Interested in said Grant.*

EXHIBIT A.

Testimonio.

13 Secretario de la Exma. Disputacion del Territorio de Santa Fé, de Nuevo Mejico.

Sesion publica en los dias 16 de Febrero y 3 de Marzo de 1825.

Certifico yo, el infraescrito, secretario de la exmo. disputacion provincial del territorio de Santa Fé del Nuevo Mejico, que en libro 2º, donde constan extendidas las actas de los acuerdos de S. E., a las 41 fojas de en folio consta haberse dado cuenta á dicha honorable corporacion con una instancia, cuyo tenor copiado a la letra es del tenor siguiente :

"EXMO. SEÑOR : " D. Antonio Chavez, ciudadano republicano de los Estados Unidos Mejicanos, y vecino del pueblo de Nuestra Señora de Belem, compreñencion de esta provincia de Nuevo Mejico, en la mas bastante y debida forma que lugar haya en dr. ante V. E. parecio y digo, que hallandome sumamente aprimido en la posecion demi propiedad y pertenencia, asi para el pasteo de mis bienes como para la extencion de la agricultura, y deseando alargarme á otro de mas arbitrio con los finas honestos de aumentar ambos dos ramos, ocurro al superior conocimiento de V. E. para que siendo de su superior aguardo tenga á bien addicarme y adjudicarme el terreno llamado el Arroyo de San Lorenzo, cuya demarcacion y lindes son pa. el sur el rancho de Pablo Garcia; para el norte la mesita de Alamillo; pa. el este ó poniente el Ojo de la Jara; y para el oeste ó oriente el rio conocido por del norte, y siendo el sitado terreno de mi solicitud, tan lobrego y riaso solitario y paramoso,ereo vivamente de la superior prudencia de V. E., teniendo á la vista y llegando á la consideracion, no se le presentaria, obstaculo, para que benifique en mi su addicion, adjudicacion y aplicacion, pues á mas de que servirá con su cultivo y enlaboracion al beneficio y seguridad de los indebeduos, circunvecinos resultará en general á la provincia un grande alibio y descanso, en quanto que por este punto se les

estorbará y pribará a los enemigos de nuestra quietud y sosiego, las incursiones, asechanzas y tentatibas, que frecuentamente im-
 14 baden é intentan, y se omitirá la extraccion, deteriora, asolacion y diminucion de los pocos intereses que han dijado para la subsistencia de los havitantes y familias de esta necesitada provincia, por tanto V. E. pido y suplica me concedo lo mismo que impetro, que en ello recibiré merced, gracia y justicia.

Juro no ser de malicia y en lo necesario &a.

ANTONIO CHAVEZ.

Sesion del dia 16 Febrero de 1825.

Pase esta instancia al sor. jefe politico de este territorio, para que á continuacion informe si el terreno que solicita esta carte corresponde á el de los poblaciones del Socorro y Sevilleta, y si se halla comprendido asimismo, si aun cuando corresponde á estas poblaciones, por ser mucha su estencion, si le puede adjudicar al solicitante sin perjuicio de tercero.

ANTONIO ORTIZ, *Presidente.*
 JOSÉ FRANCO. BACA.
 JOSÉ FRANCISCO ORTIS.
 PEDRO BAUTISTA PINO.
 MATIAS ORTIS.

JUAN BAUTISTA VIGIL, *Secretario.*

EXMO. SOR.: La solicitud de D. Antonio Chabes, vecino de Belem, es positivo que comprehende parte del terreno del Socorro y parte del que corresponde á Sevilleta; pere tambien es cierto que por lo bosto deambos terrenos, y ser endonde dividen sus posesciones, lejos de serles perjudicial á ambas poblaciones, les resulta en beneficio por las razones que boy a exponer en seguida. La primera y mas principal es el aumento de la pobacion en terminos que proporciona recursos á las expresadas poblaciones del Socorro y Sevilleta, tanto pa. cubrir una parte de las entradas y salidas de los
 15 barbaros que aun de paz bienen á robar, como las que de guerra traten de ostilisar á las mismas poblaciones ó sus circumbecinos ó limitroses. La *segun* segunda, que á los indibiduos de las referidas nuebas poblaciones les quedan terrenos amplicimos para pasteos, labores, usos y cebidumbres, sin que les haga la menor falta el que se le concedo á Chavez, como en otro tiempo no lo hizo á Belem, el que se dio al Sabinal, y aun á la misma Sevilleta, aunque hera de la pertenencia del primero. La tercera que concediendole al referido Chavez, la merced que solicita debe producir las emulaciones que *que* apeteceen para que se puedan ocupar los interesantes baldios del Bosque del Apache y San Pascual, cuyos terrenos en una y otra banda ofrecen la mejor comodidad á los ganaderos y labradores, que aunque en el sentro de las demas poblaciones tengan tierras, estas por su antiguedad estan llenas de laugastas y causadas de un-mismo cultibo. Quarta, que la solicitud de Antonio Chavez tiene mas de necesidad que de afecta á abaricia respecto de que á este indibiduo le ha llevado la Nacion Nabajo la mayor parte de

sus bienes de campo y necesita poseer un terreno donde, á fuer de su ferocidad, restablecerse de la perdidas que ha recibido durante la guerra de la expresada tribu. Quinta, que no resultando perjuicio el maslebe al Socorro y Sebilleta en la donacion que solicita Chabéz es muy verosimil que los vecinos de ellos tendran endonde por su notoria pobresa recibir ocupaciones que les facilite la subsistencia de que carecen á la par de sus conbecinos que se hallan sujetos á la misma casi deplorable suerte. Por todas estas razones y muchas mas que omito, por no molestar a V. E., soy de parecer que bien pueda desde luego accederse á la solicitud de Don Antonio Chabéz en la que no pondran reparo los de las poblaciones referidas, á menos que uno ú otro indibiduo *discolo* enemigo de la filicidad de sus semejantes, las seduzca indebidamente con pretestos que nunca faltan para lo que no se quiere. Esto es lo que puedo informar a V. E. en cumplimiento de lo acordado, y segun los practicos conocimientos que me asistem en la materia. Dios gue á V. E. muchos años.

Santa Fé, 25 de Febrero de 1825.

BARTOLOMÉ BACA.

Sesion del dia 3 de Marzo de 1825.

Libro 2º de las actas de la exma. diputacion territorial del Nuebo Mejico, á las 43 pajas de su folio, dice, se procedió á la lectura de dos informes que de solicitud de terrenos de Dn. Antonio Chabéz y Don Pedro José Perea presentó en seguida el señor jefe político, de los cuales, enterando S. E. resolbio que se les adjudique á los dos indibiduos el terreno que solicitan archibandose en la secretaria de S. E. las expedientes originales, como esta prebenido, acordado y sistemado para iguales casos, dando á los interesados el testimonio correspondiente, que les serbirá de titulo, con el cual se presentara el D. Antonio Chabéz al alcalde del Socorro, para que lo ponga en posecion, y Dn. Pedro José Perea á Dn. Juan Esteban Pino para igual operacion.

Concuerda fiel y legalmente con el original, del cual para la debida constancia y por disposicion de la exma. diputacion territorial del Nuebo Mejico, he sacado la presente copia, y del que se les ha dado á los interesados el correspondiente testimonio que les serbirá de titulo.

Santa Fé, 5 de Marzo de 1825.

JUAN BAUTISTO VIGIL, *Srio.*
[RUBRIC.]

Derechos de todo lo practicado veinte pesos.

TERRITORIO DE N. M., }
Condado del Socorro. }

Certifico yo el abajo firmado, escribano de la corte de pruebas de dicho condado, que por mi fué enregistrado el antecedente documento en páginas 128, 129, 130, 131 del libro letra D, que en esta oficina de mi cargo hay con tal fin.

En testimonio de lo cual pongo mi mano y el sello de la corte de pruebas de dicho condado hoy 27 de Mayo, A. D. 1873.

[SELLO.]

SEVERA A. BACA, *Escribano.*

Derechos por registros en los tres documentos cinco pesos.

S. A. BACA.

EXHIBIT B.

D. Juan Franco. Baca, ciudadano y alcalde constitucional de la juridicion de Sn. Migl. del Socorro, con la facultad que para ello mes conferida pasé en veinte de Abril de mil ochocientos veinty y cinco años, a posesionar al C. D. Antonio Chaves en terreno qe. solicita.

Y en complimte. a la orden qe. con fha. sinco de Marzo del mismo año me presentó dho. Chavs., vesino de la juridicion de Sta. Maria de Belen, en la mersed que me presentade la eselentisima diputacion provincial dese territorio del N. Mco. con un informe del jefe politico que le acompaña á dha. mersed, que pasé á posecionar á Chavs. al terreno qe. solicita, á lo que debio pasar y pasé con dos regidores dese ayuntamto. y dos vecinos dese juridicion, á quienes les yse ver la orden y mersed. Los primeros fueron D. Anselmo Tafoya, D. Marcos Baca y los segundos son los ciudadanos Don José Lionicio Silba y Don Agustin Trugio, y como tal alcce. posecioné al ciudadano D. Auto. Chavs. en el sitado terreno qe. solicita, hasiendo las funciones que me previenen las leyes, poniendole por mojoneras por el norte en donde parte la Mesita del Alamio, por oriente el Rio del Norte, per el sur un sabinito orqetudo qe. está en la enmediacion del rincon del rancho de Pablo Garcia, qe. 18
communite. yaman. Este sabinito está para el lado del camino real que se trancita al dh. Socorro, á la parte de la bega; pr. el poniente el ojo conocido de la Jara. Como dho. alccede. cumpliendo con lo mandado en virtud y forma de dro., agarré á dicho Chaves de la mano, le pacié por sus tierras, quien dió voces, clamó viva la nacion y ntra. independencia, víba el Sr., cumpliendo con las ceremonias a custumbradas; dió voces, arancó llervas, tiro piedras y alabaron el nombre de Ds. y esta al lisencia dejé al ynteresado en quieta posesion y con la facultad qe. ms conferida le autericé y firmé con dos testigos de asa. de lo que doy fe en dho. dia, mes y año.

JUAN FRANCO. BACA.

Asa.: VISENTE SILBA.

Asa.: JULIAN OCAÑA. (X)

TERRITORIO DE N. M., }
Condado de Socorro. }

Certifico yo el abajo firmado, escribano de la corte de pruebas de dicho condado, que el antecedente documento fué enregistrado por mi en paginas 131, 132, del libro letra D, que en esta oficina de mi cargo hay con tal fin.

En testimonio de lo cual pongo mi mano y el cello de la corte de pruebas de dicho condado, hoy 27 de Mayo, A. D. 1873.

[SELLO.]

SEVERO A. BACA, *Escribano.*

EXHIBIT A.

Testimonia.

Office of secretary of the most excellent provincial deputation of the Territory of Santa Fé, of New Mexico.

Public session of the 16th day of February and 3rd day of March, 1825.

19 I, the undersigned, secretary of the most excellent provincial deputation of the Territory of Santa Fé, of New Mexico, do certify that in Book Second, wherein appears recorded the journal of the proceedings of its excellency, on page 41 of the book, it appears there was report made to said honorable body upon a petition, the tenor whereof, copied letter for letter, is as follows:

MOST EXCELLENT SIR: I, Antonio Chavez, a republican citizen of the United Mexican States, and a resident of the town of our Lady of Belem, jurisdiction of this province of New Mexico, in the most ample and due legal form appear before your excellency and State, that finding myself very much crowded in the possession of my property and its appurtenances, as well in the pasturing of my stock as in the extension of agriculture, and desiring to remove to another place of greater capacity, with the honest purpose of enlarging both businesses, I apply to the superior wisdom of your excellency, to the end that, if such should be your high pleasure, you may deign to assign and adjudge me the tract called the San Lorenzo Arroyo, whose description and boundaries are: On the south the ranche of Pablo Garcia; on the north the little table-land of the Alamillo; on the east or west the Jara spring; and on the west or east the river known as the Del Norte; and the said land referred to in my petition being so uninviting, uncultivated, desolate and bleak, I earnestly believe, from your superior discernment, that your excellency, having in view and considering the matter, will have presented to you no obstacle to the granting, the adjudging, and the assigning of the same to me; for, besides its contributing by cultivation and improvement to the benefit and security of the surrounding individuals, there will result to the province in general a great assistance and relief, inasmuch as at this point will be frustrated and prevented the incursions, ambushes and assaults

20 of the enemies of our quietude and peace, who often invade and attack; and it will stop the exportation, deterioration, and decrease of the little live stock they have left for the subsistence of the inhabitants and families of this needy province; wherefore I ask and pray that your excellency grant me what I pray for, whereby I will receive favor, grace, and justice. I declare not to act with dissimulation, and as may be necessary, &c.

ANTONIO CHAVEZ.

Session of the 16th day of February, 1825.

This document will pass to the honorable the political chief of this Territory in order that, in continuation, he report whether the land that this party asks for pertains to that of the settlements of Socorro and Sevilleta, and whether it is embraced in the same, and also whether, though it pertain to the settlements, it may, on account of their great extent, be granted to the petitioner without injury to a third party.

ANTONIO ORTIZ, *President.*
JOSÉ FRANCISCO BACA.
JOSÉ FRANCISCO ORTIZ.
PEDRO BAUTISTA PINO.
MATIAS ORTIZ.

JUAN BAUTISTA VIGIL, *Secretary.*

MOST EXCELLENT SIR: It is certain that the application of Antonio Chavez, a resident of Belem, refers to a part of the tract of Socorro and a portion of that which belongs to Sebilleto, but it is also certain that on account of the great extent of both tracts and it being where their possessions separate, far from being injurious to those settlements, there results to them a benefit, for the reasons which I will proceed to state, as follows: The first and most important is the increase of the population to such a degree that it will afford means to the said settlements of Socorro and Sebilleto by guarding a portion of the entrances and exits of the savages, who, though at peace, come to

rob as those at war endeavor to harass the same settlements or
21 those surrounding or near them. The second, that to the resi-

dents of the said new settlements there remain most ample lands for pastures, fields, uses, and transits, so that the land which may be granted to Chavez will cause them not the least scarcity, as on another occasion that granted to Sabinal did not to Belem, or even to Sebilleta itself, though it was an appurtenance of the first. The third, that making to the said Chavez the grant he asks would produce the emulation desired, so that the desirable vacant lands of the Bosque del Apache and San Pascual may be settled, which lands upon the one and the other bank present the greatest advantages to stock-raisers and farmers, for, although they may have lands in the center of other settlements, these from their age are full of locusts and worn out by constant cultivation.

Fourth. That the petition of Antonio Chavez has in it more of necessity than of affectation or covetousness, inasmuch as from that individual the Navajo tribe has taken the greater part of his live stock, and he requires a tract from which, through its productivity, to re-establish himself from the losses he has suffered during the war with the said tribe. Fifth, that the slightest damage not resulting to Socorro and Sebilleta from the grant which Chavez asks, it is very probable that the people there, for their poverty is well known, will have a place where they may get employment which may furnish them subsistence and which (like their neighbors, who are subject to the same almost deplorable condition), they lack.

For all these reasons and many others, which I omit in order not to trouble your excellency, I am of opinion that the petition of Antonio Chavez may be acceded to at once, to which the people of the settlements aforesaid will make no objection, unless some peevish person or other enemy of the welfare of his fellow-creatures
 22 should unjustly persuade them with pretexts, which never lack against that which is not wanted. This is what I can report to your excellency in compliance with what was resolved and in accordance with the practical knowledge I have in the matter. God preserve your excellency many years.

Santa Fé, 25th of February, 1825.

BARTOLOME BACA.

Session of the 3rd day of March, 1825.

Book Two of the Journal of the most excellent territorial deputation of New Mexico, on the 43rd page thereof, says the reading of two reports was proceeded with, which his excellency the political chief then presented upon the petitions of Antonio Chavez and Pedro José Perea for lands, and this honorable body, being advised thereof, resolved that there be adjudged to the two individuals the land they ask, filing in the office of the secretary of this honorable body the original expedients, as is provided, ordered, and customary in similar cases, and furnishing the parties interested the corresponding testimonio, which will serve them as title, and with which Antonio Chavez will present himself to the alcalde of Socorro that he may place him in possession, and Pedro José Perea to Juan Esteban Pino, Esquire, for the same action.

This agrees faithfully and legally with the original from which, as due testimony and by direction of the most excellent territorial deputation of New Mexico, I have taken the present copy, of which there has been furnished the parties interested the corresponding testimonio, which will serve them as title.

Santa Fé, March 5, 1825.

JUAN BAUTISTA VIGIL, *Secretary.*
 (Vigil's rubric.)

Fees for all that has been done, twenty dollars.

23 TERRITORY OF NEW MEXICO, {
 County of Socorro. }

I, the undersigned, clerk of the probate court of said county, do certify that the foregoing document was recorded by me on pages 128, 129, 130, 131 of Book Letter D, which is in this office under my charge for such purpose.

In testimony whereof I place my hand and the seal of the probate court of said county this 27th day of May, A. D. 1873.

[SEAL]

SEVERO A. BACA, *Clerk.*

Fees for recording the three documents, five dollars.

S. A. BACA.

EXHIBIT B.

I, Juan Francisco Baca, citizen and constitutional alcalde of the jurisdiction of San Miguel del Socorro, under the authority conferred upon me in the premises, proceeded on the twentieth of April, of the year one thousand eight hundred and twenty-five, to place in possession the citizen Anto. Chaves upon the land that he applies for; and in obedience to the order which, under date of the 5th of March of the said year, said Chaves, a resident of the district of Santa Maria de Belem, presented me, borne upon the grant he exhibited to me from the most excellent provincial deputation of this Territory of New Mexico, with a report of the political chief, which accompanies said grant, directing me to proceed to place Chaves in possession of the land he asks; in consideration whereof, I should proceed, and I did proceed, with two aldermen of this ayuntamiento, and two residents of this district, to whom I caused to be exhibited the order and the grant, the former being Anselmo Tafoya and Marcos Baca, and the latter being the citizens José Lionicio Silva and Augustin Trujillo, and as such alcalde did place the citizen Antonio Chaves in possession on the said land which he applies for, performing the ceremonies the laws require of me, assigning him for landmarks on the north, where the small table-land of the Alamillo begins; on the east, the del Norte river; on the

24 south, a small forked cedar tree in the middle of the bend
of the Pablo Garcia ranch, commonly so called, this little

cedar being on the same side with the main road which is traveled toward said Socorro, on the side of the meadow; on the west, the spring known as the Jara spring. As alcalde aforesaid, in pursuance of direction, and in virtue and in form of law, I took the said Chaves by the hand and led him over his land, and he, in observance of the customary ceremonies, shouted, "Long endure the nation and our independence, and long live the sovereign," and he shouted and plucked up herbs, cast stones, and they praised the name of God, and by authority I left the party interested in peaceable possession, and I, under the authority which is conferred on me, authenticated and signed this, with two witnesses in my attendance, to which I certify on said day, month, and year.

JUAN FRANCISCO BACA.

Attending:

VICENTE SILBA.

Attending:

JULIAN ORCANÁ. (X.)

TERRITORY OF NEW MEXICO,
County of Socorro. }

I, the undersigned, clerk of the probate court of said county, do certify that the foregoing document was recorded by me on pages

131 and 132 of Book Letter D, which is in this office under my charge for such purpose.

In testimony whereof I set my hand and the seal of the probate court of said county the 27th day of May, A. D. 1873.

[SEAL.]

SEVERO A. BACA, Clerk.

EXHIBIT C.

In this county of Valencia, at the place Sabinal, in the Territory of New Mexico, on the twenty-sixth day of the month of October, in the year of our Lord 1850, before me, Ramon Luna, prefect of said county, and my attending witnesses, appeared, present, and in their proper person, Mrs. Monica Pino, widow of Antonio
25 Chavez y Aragon, deceased; Rafael Luna, Anastacio Gareillo, and Ramon Luna, all residents of this county under my jurisdiction, all of whom I recognize and certify to; and the party first aforementioned declared that she would convey, and actually did convey, to the three of the second part the present documents herewith accompanying unto them, the said Rafael Luna, Anastacio Gareillo, and Ramon Luna, the said sale which she has made to the three persons referred to being of the land which was granted to the above-mentioned deceased husband of the said vendor by the most excellent provincial deputation of the Territory of Santa Fé, of New Mexico, and she has made the same for the price and sum of five hundred dollars (\$500) in merchantable and current money, and if it is or may be worth more she makes unto them gift and donation of the excess, pure, full, and perfect, so termed in law. Said sale and delivery of document she has made to the vendees free of all claim and mortgage, so that the said vendees may, in virtue of their right and at their will, exchange, sell, or alienate the same to the person or persons they wish to, so that to prevent the same there shall be no one to interpose any incumbrance or raise any question, either through her or through any successor of hers, and if by accident or mischievousness it should so happen in the future she prays, requests, and charges the authority or authorities, of whatsoever class they be, that they entertain no claim whatever, but that there be carried into effect what is by her stipulated in this conveyance of document which she has made to the aforementioned vendees; as also covenants and binds herself with all the vigor of the law, if it be necessary, by due process, to prosecute the suit herself, and continue the same until the said vendees are left in quiet and peaceable possession of the land she has sold
26 and of the conveyance of document she has made to them; and that this conveyance of document and this sale of land which she has made may have all the force and validity necessary she requested me, the present prefect, to interpose my authority, and I interposed the same in exercise of the power conferred upon me as such, signing this, with those in my attendance and with the said Doña Monica, who, not knowing how to sign, made a sign of the cross with her own hand before me, clerk of the courts

at this place, Sabinal, upon this day, of the date above written; to all of which I certify.

RAMON LUNA, *Prefect.*
MONICA PINO. X.

ANTONIO FRANCISCO CHAVES, *Clerk.*

Attending:

JOSE MA. CHAVES Y PINO.

Attending:

YGNACIO CHAVES Y ARAGON.

TERRITORY OF NEW MEXICO, }
County of Socorro. }

I, the undersigned, clerk of the probate court of said county, do certify that the foregoing instrument was by me recorded on pages 132 and 133 of Book Letter D, which is in this my office for such purpose.

In testimony whereof I set my hand and the seal of the probate court of said county this 27th day of May, A. D. 1873.

SEVERO A. BACA,
[SEAL.] *Probate Court.*

The foregoing is, to the best of my knowledge and belief, a correct translation of three documents in the Spanish language, marked respectively Exhibits A, B, and C.

JOHN P. RISQUE, *Translator.*

Sworn to and subscribed before me this 25th day of August, 1873.

JAMES K. PROUDFIT,
United States Surveyor General.

27

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FÉ, N. MEX., *August 24th, 1873.*

The foregoing translation of the original documents in the Spanish language on file in this office having been by me compared with said originals and found correct is hereby adopted as the official translations.

DAVID J. MILLER, *Translator.*

SANTA FÉ, N. MEX., *September 26, 1873.*

Received of Hon. James K. Proudfit, surveyor general, one paper, marked C, written in original Spanish, being a deed from Mrs. Monica Pino to Ramon Luna, Rafael Luna, and Anastacio Garcia, dated October 26, 1850, appearing as Exhibit C in the official translation in the surveyor general's office, in the case of private land

claim in the name of Antonio Chavez for "San Lorenzo" or Alamillo tract of land in Socorro county, New Mexico.

RAMON LUNA,
ANASTACIO GARCIA,
*For Themselves and All the Heirs of Rafael Luna
and All Others Interested in said Grant,*
By MARTIN B. HAYES,
Their Agent.

Testimony.

Testimony of Juan Francisco Baca, taken before Joseph C. Hill, United States commissioner, in regard to the ranch or sitio of Alamillo or arroyo of San Lorenzo.

My name is Juan Francisco Baca. I live in Limitar, in the county of Socorro, and I was eighty-five years of age in August, 1873. I know the sitio of Alamillo or arroyo of San Lorenzo. I have known it since the year 1815 or 1816. It was granted to Antonio Chaves, commonly known as Antonio Chaves. I was 28 at that time alcalde constitutional. The departmental deputation sent me an order to place the said Antonio Chaves in possession of the said sitio. This was about the year 1822. I am not very certain as to the exact date. The sitio is bounded on the north by the mesita del Alamillo, where it leaves the river, on the east by the Rio del Norte, on the south by the ranch of Pablo Garcia, the line running toward a forked cedar tree about a mile and a half from the river. I do not remember the western boundary. I placed Antonio Chaves in possession in due form of law. He took possession and kept continuous possession of the same until his death. His heirs sold the sitio to Ramon Luna, Rafael Luna, and Anastacio Garcia. They have continuously occupied the said sitio up to the present time. I am not interested in the said sitio or tract of land in any manner whatsoever.

his
JUAN FRANCISCO BACA. (RUBRIC.)
mark.

Witness:

J. FRAN'CO CHAVES.

I, Joseph C. Hill, a United States commissioner for the Territory of New Mexico, do certify that the foregoing evidence was duly taken by me, first having caused the said Juan Francisco Baca to come before me, who, first having duly sworn to speak the truth, the whole truth, and nothing but the truth, that thereupon he testified in the words set forth in the foregoing testimony signed by him; that said testimony was taken by me at Limitar, in the county of Socorro, on the first day of November, in accordance with the request and direction of the surveyor general of the Territory of New Mexico sent to me to that effect.

J. C. HILL,
United States Commissioner.

29

Antonio Chaves (San Lorenzo) Grant.

Opinion.

This grant is brought before me under the act of Congress of July 22, 1852, establishing this office, and the eighth article of the treaty of Guadalupe Hidalgo.

It appears from the record the departmental assembly of New Mexico granted the land in question to Antonio Chaves in the year 1825; that he was legally placed in possession on the 20th day of April, 1825, by the proper alcalde, and that the said Chaves and his legal representatives have remained ever since in undisputed occupancy and ownership, except when disturbed by savage Indians.

I respectfully recommend to Congress that the title to the land, according to boundaries set forth in the act of possession, be confirmed to the legal representatives of Antonio Chaves, deceased, the original grantee.

I transmit complete copies of the record in triplicate.

JAMES K. PROUDFIT,
United States Surveyor General.

Surveyor general's office, Santa Fé, N. Mex., January 5, 1874.

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, N. MEX., *January 24, 1874.*

The foregoing is a correct transcript of the papers on file in this office in private land claim reported as No. 79, in the name of Antonio Chaves, for land known as the Arroyo de San Lorenzo tract.

[L. s.]

JAMES K. PROUDFIT,
United States Surveyor General.

U. S. SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, N. M., *August 27th, 1883.*

30 I hereby certify that the foregoing twelve pages of printed matter (except the letter of the Secretary of the Interior) is a correct copy of the record of the Antonio Chaves grant, reported No. 79, as appears from the original papers on file in this office.

Witness my hand and seal the day and year above written.

HENRY M. ATKINSON,
U. S. Sur. Gen'l.

(Endorsed:) No. 37, F. No. 2. Copy (certified) grant and muniments of title, &c. Filed Sept. 24, 1892.

31 And be it further remembered that on the same day, to wit, the 24th day of September, A. D. 1892, a map was filed with the said petition and is marked Plaintiff's Exhibit No. 2, as follows, to wit:

(Here follows map marked page 32.)

No 444.
Mayes. p. 32.
U.S.A.

La Jolla Spring
27 miles

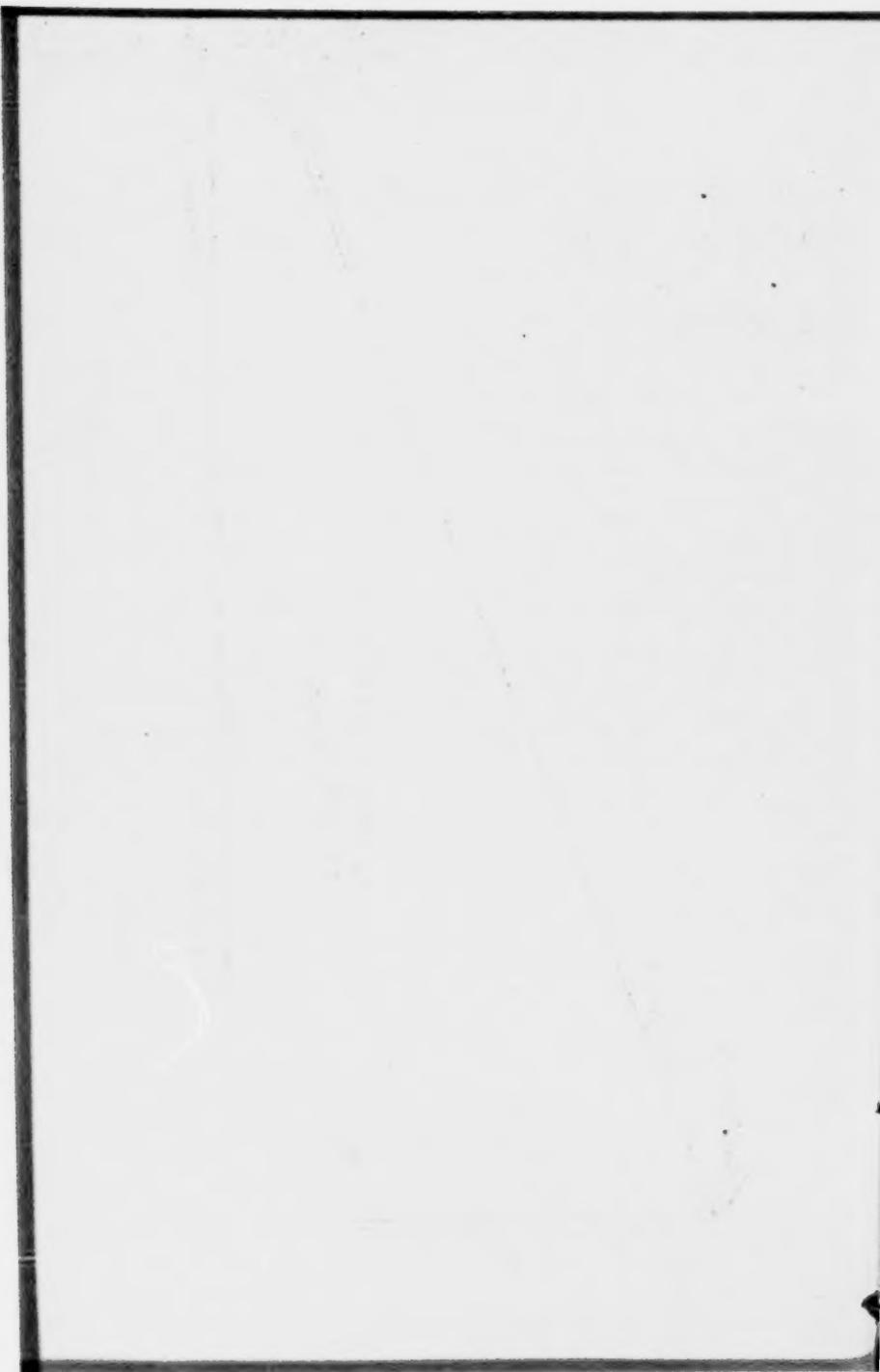
ANTONIO CHAVEZ GRANT no 79.
130,138 $\frac{9}{10}$ acres

25 $\frac{1}{2}$ miles

Alomia Mtns.

Mountain tree

10/16/01



33 And be it further remembered that on the same day, to wit, the 24th day of September, A. D. 1892, a summons was issued out of the said court, and was thereafter duly served on the defendant and return of such service duly made; which summons and proof of service and all endorsements are in the words and figures following, to wit:

34 *Summons.*

UNITED STATES OF AMERICA, }
District of New Mexico, }^{ss:}

In the U. S. Court of Private Land Claims.

MARTIN B. HAYES, Plaintiff,	Petition Filed in the Clerk's Office this 24th Day of Sep- tember, A. D. 1892.
<i>versus</i>	
THE UNITED STATES OF AMERICA, Defendant.	

The President of the United States of America to Matt. G. Reynolds, U. S. att'y for the court of private land claims, Greeting:

You and each of you are hereby notified that an action has been brought in said court by Martin B. Hayes, plaintiff, against you, as defendant under the provisions of the act of the Congress of the United States entitled "An act to establish a court of private land claims, and to provide for the settlement of private land claims in certain States and Territories," approved March 3d, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur or answer, to the petition filed in said action in said court within thirty days from the date of service of this summons upon you; and if you fail so to do the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Santa Fé, in said district, this 24th day of September, A. D. 1892, and of the Independence of the United States the 116th year.

[SEAL.]

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES,
Deputy Clerk.

35 [Endorsed:] Gen. No., 37; file No., 4. U. S. court of private land claims, district of New Mexico. Martin B. Hayes, plaintiff, *versus* The United States of America, defendant. Summons. Filed this 11th day of October, A. D. 1892. James H. Reeder, clerk, by Ireneo L. Chaves, deputy clerk. Jno. H. Knaebel, of Santa Fé, attorney for plaintiff.

Proof of Service.

UNITED STATES OF AMERICA, }
District of New Mexico, } ss:

SANTA FÉ, Oct. 10, A. D. 1892.

I hereby certify that I received the within writ on the 24 day of Sept., A. D. 1892, and that I have personally served the same upon the said defendant by delivering to Matt. G. Reynolds, U. S. att'y for the court of private land claims, and each of them, personally, a true copy of the within writ, at the time and place as follows: As to Matt. G. Reynolds, at Saint Louis, county of —, on the 3 day of Oct., A. D. 1892; as to — —.

I hereby acknowledge service of the petition and exhibits filed in this cause. This 3rd day of October, 1892.

St. Louis, Mo.

MATT. G. REYNOLDS,
U. S. Attorney.

This writ therefore returned by me, as the law directs, this 10 day of October, A. D. 1892.

TRINIDAD ROMERO, *Marshal*,
By SERAPIO ROMERO,
Deputy Marshal.

Marshal's Fees.

OCT. 3, '92.

Service, 1, defendants, at \$4.....	\$4 00
Mileage, — miles at 6c, going only.....	

Total..... \$4 00

Paid by — —.

36 And be it further remembered that afterwards, to wit, on the ninth day of March, A. D. 1893, an answer was filed in the said cause in the office of the said clerk; which answer is in the words and figures following, to wit:

37 UNITED STATES OF AMERICA, ss:

In the Court of Private Land Claims, Santa Fé District, March Term, A. D. 1893.

MARTIN B. HAYS, Plaintiff, }
vs.
THE UNITED STATES, Defendant. }

Answer.

Comes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the petition filed herein says:

It has no knowledge or information sufficient to enable it to form

a belief as to whether on the 3rd of March, 1825, the governor and the departmental assembly of the Territory of New Mexico undertook to grant to one Antonio Chaves a large tract of land situate in the now county of Socorro, but says, if they did so undertake to do it was without any warrant or authority of law and in violation of the laws in existence and contrary to the policy as declared by the Mexican Republic.

It denies that the present location and claim of the boundaries of said alleged attempted grant are correct, and

It denies that the quantity claimed was ever attempted to
38 be granted, either by the governor or the territorial deputation, or both, and that if they did so attempt to grant said land as claimed, as to boundaries and quantity, said attempt was in direct violation of the express provisions of the laws of the Mexican Republic for the disposition of the public domain within the Territory of New Mexico and therefore absolutely null and void.

It denies that the survey made or attempted to be made of said grant by a deputy surveyor under the directions of the surveyor general of the territory of New Mexico is correct.

It denies that the juridical possession was or could have been given to said tract of land on the 20th of April, 1825, for the reason that it appears that the eastern portion of the grant, as alleged by plaintiff, was then asserted to have been prior thereto disposed of by the Mexican nation under what is commonly known and designated as the Socorro grant and the La Joya or Cevilleta grant.

It denies that the territorial deputation had any authority to issue title or make a grant.

It denies that the same had authority to receive the report of the governor and make the same the basis of its action.

It says whatever proceedings may have been had in relation to the same by the territorial deputation and the governor were irregular and unknown to any law existing prior, at the time, or subsequent thereto.

Further answering, it says it is informs, believes, and so charges the fact to be, that a large portion of this grant is claimed—
39 by what right or title it has no information—by the alleged claimants and owners of the Socorro grant and the alleged claimants and owners of the La Joya or Cevilleta grant. It therefore pleads a defect of parties defendant, the same having an interest in defeating the confirmation of this grant alleged.

It denies that said alleged original grantee, Antonio Chaves, or any one for him, ever took possession or held, cultivated, grazed, or occupied the land claimed by the plaintiff.

It denies that the same had been continuously occupied from 1825 down to the present time by Antonio Chaves and those claiming under him.

It says it has no knowledge or information sufficient to enable it to form a belief as to whether or not this plaintiff by proper deraignment of title holds or owns the whole or any part of the said alleged interest of said Antonio Chaves.

Further answering, it says that at no time was the present extent,

as claimed in this grant, known or designated as the Arroyo San Lorenzo, and says the Arroyo San Lorenzo tract was a small tract lying on the eastern edge of this alleged grant and forming the boundary line between what is alleged to be the Socorro grant and the La Joya or Cevilleta grant, and its western extention never did, then or now, extend twenty-seven miles from the Rio Grande west, nor did it extend then or now, on its western side, 40 twelve miles from north to south, nor was it so charged or claimed in 1825, at the time said attempted grant is alleged to have been made.

Further answer, it says that said grant as claimed is not one which under the laws of nations, the treaty between the Republic of Mexico and the United States, or the applications of the principles of equitable jurisprudence — entitled to confirmation by this court.

It denies that the conditions imposed, *os* cultivation and inhabitancy, were ever complied with.

All other allegations not hereinbefore answered are denied, and it is demanded that plaintiff be put to his proof of all the allegations in his petition contained, as provided they shall be by the act approved March 3rd, 1891, under which this court assumes jurisdiction of this controversy, and that the plaintiff shall be put to his proof as to his pretended interest or supposed interest therein.

Now, having fully answered, it prays the court that a decree may be entered rejecting the confirmation of said alleged grant, and for such other and further orders as may seem meet and that this court may be authorized to make in the premises.

MATT. G. REYNOLDS,
U. S. Attorney.

41 And be it further remembered that afterwards, to wit, on the 14th day of March, A. D. 1893, the Atlantic and Pacific Railroad Company filed in the said office a paper in the words and figures following, to wit:

42 UNITED STATES OF AMERICA, *ss*:

In the Court of Private Land Claims, Sitting in the Territory of New Mexico, at the City of Santa Fé.

MARTIN B. HAYES }
vs. } No. 37. Antonio Chaves Grant.
THE UNITED STATES. }

Comes now the Atlantic and Pacific Railroad Company, upon leave first had and granted to intervene in the above-entitled cause, and for its answer shows—

That it is a corporation duly incorporated under an act of Congress approved July 27th, 1866.

That on or about the 12th day of March, 1872, it duly and legally filed with the Commissioner of the General Land Office of the

United States a map of definite location of its line of road, and thereafter, in the year 1881, it constructed its line of railroad through the counties of Bernalillo and Valencia, in the Territory of New Mexico.

That by the said act of Congress creating said corporation it was granted the odd-numbered sections of public land in the Territory of New Mexico within a distance of forty miles on each side of the line of railroad constructed by it, together with a strip of land 200 feet in width as and for its right of way, and also an indemnity strip of 10 miles adjoining said 40 miles, and that the land the title to which is sought to be confirmed by plaintiff in this action lies within said forty-miles limit.

That at the time of filing its map of definite location as aforesaid no proceedings were had anywhere or in any way preventing the rights granted to this defendant by said act of Congress from attaching to any of the real estate (to which they could attach under the terms of its said grant) described in plaintiff's petition.

That by virtue of the facts aforesaid said corporation before 43 came seized of the title to the odd-numbered sections embraced within the limits of the land described in said petition and which it is unable at this time more particularly to describe.

Wherefore this defendant prays that plaintiff's petition be dismissed as to all of the odd-numbered sections above-mentioned.

(Signed) C. N. STERRY,
Attorney for Atlantic and Pacific Railroad Company.

44 And be it farther remembered that on the 13th day of December, A. D. 1892, the same being the 12th day of the November term, the following proceedings were had, to wit:

MARTIN B. HAYES, Plaintiff, }
versus } No. 57.
THE UNITED STATES, Defendant. }

Come now the parties in the above-entitled cause, the plaintiffs appearing by their attorneys, John H. Knaebel, and the Government by Matt. G. Reynolds, Esq., United States attorney, and the said parties announcing themselves ready for trial; and the plaintiffs, being put to their proof as to the allegations in their petition, and to show cause why said grant should be confirmed unto them, introduced oral and documentary proof.

45 MARTIN B. HAYS, Plaintiff, }
vs. }
THE UNITED STATES, Defendant. }

On the trial of this cause, to wit, on the 13th of December, 1892, the following testimony was taken, to wit:

ELIAS BREVORT, being duly sworn, testified on behalf of plaintiff, in English, as follows:

Direct examination.

By Mr. KNAEBEL, counsel for plff:

- Q. How long have you lived in the Territory of New Mexico ?
A. Since 1850.
Q. Were you acquainted with Anastacio Garcia in his lifetime ?
A. I was; I knew him first in 1858.
Q. Where was he then living ?
A. He was living at the Alamillo.
Q. Do you know the Alamillo grant ?
A. Yes, sir.
Q. Do you know whether he claimed that grant in 1858 ?
A. He was living on it.
Q. He is dead ?
A. I understand he is dead.

Cross-examination.

46 By Mr. REYNOLDS, U. S. attorney :

- Q. When did you first know him ?
A. I knew him in '58.
Q. Was he living there then ?
A. Yes, sir.
Q. Was he living there when he died ?
A. I don't know; I saw him subsequently, about '69 or '70.
Q. Was he living there then ?
A. Yes, sir.

WILL. M. TIPTON, being first duly sworn, testified on behalf of plaintiff, in English, as follows:

Direct examination.

By Mr. KNAEBEL, attorney for plaintiff:

- Q. How long have you had personal experience and held official positions in the surveyor general's office for this Territory ?
A. For about sixteen years prior to the first of last April.
Q. Please look at the book now shown you and state what it is.
A. It is book of the proceedings of the provincial deputation of New Mexico, beginning on the 17th day of the month of February, 1824, and concluding with the proceedings of that deputation on the 29th of January, 1828.
Q. What are the papers now shown you and marked file 158 ?
47 A. These are two papers on file in the office of the surveyor general in the matter of the private land claim known as the Antonio Chaves or Alamillo, for the San Lorenzo Arroyo grant. This first document, which is designated by the letter "A" in red

ink, purports to be a certified copy of certain proceedings in the provincial deputation in relation to the Antonio Chaves grant.

Q. Certified by whom?

A. By Juan Bautista Vigil.

Q. Are you acquainted with his signature as found in the archives?

A. Yes, sir.

Q. In your opinion, is that signature genuine?

A. Yes, sir; it is.

A. The second document is designated by letter "B," in red ink, and purports to be an act of possession of this same tract, signed by Juan Francisco Baca, constitutional alcalde of the jurisdiction of Socorro.

Q. Were those papers a part of the evidence introduced before the surveyor general when this case was reported to the Congress of the United States?

A. I don't see that the surveyor general refers to these documents in his report of the case. I presume they are, but I don't know it to be a fact.

48 Q. They are part of the papers in the case now?

A. Yes, sir.

Q. How long have they been in the office?

A. There is no number on them to show when they were filed.

Mr. KNAEBEL: Offer translation. I tender in evidence the record of the proceedings of the departmental assembly, so far as it relates to the title in this case, especially the page 43 of the book and leaf forty-one of the book.

(This evidence is all stated in words and figures in the foregoing Exhibit No. 11.)

No cross-examination.

MARTIN B. HAYS, the plaintiff, being duly sworn, testified in his own behalf, in English, as follows:

Direct examination.

By Mr. KNAEBEL, attorney for plaintiff:

Q. Do you know the Antonio Chaves grant?

A. Yes, sir.

Q. When did you first see it?

A. In 1873.

Q. Who was living on it?

A. Anastacio Garcia, who claimed to own one-third.

Q. Who claimed to own the other?

A. Ramon Luna heirs and Rafael Luna owned a third.

Q. Did you know Anastacio Garcia?

481 A. Yes, sir; I knew him very well.

Q. When did you become first interested in this grant?

A. I can't give the exact date except when I refer to my papers; in the year 1873.

Q. Have you continued interested ever since?

A. Yes, sir.

Q. From what means did you acquire your title?

A. Laura A. Bond, Latham L. Higgins, and Charles P. Arms.

Mr. KNAEBEL: I offer this in evidence.
(Plaintiff's abstract and conveyances.)

Q. Do you know the boundaries of the grant?

A. Those that are relied on in the papers, I do, and have been to them all, pointed out and located on the earth's surface. I protested against this survey and had it resurveyed, and changed the boundaries after the title passed to me.

49 This cause having been adjourned on the 13th of December, to allow the United States time in which to present its defense, the same was called up on this day, to wit, the 16th of March, 1893, for further hearing, and the following testimony was offered on behalf of the defendant, The United States, to wit:

Appearances: John H. Knaebel, Esqr., for petitioner; Matt. G. Reynolds, Esqr., for The United States.

Mr. REYNOLDS: If the court will remember, the plaintiff introduced his testimony-in-chief at the last term of court with the understanding that the Government would be allowed to offer any defenses it might have later on. I have filed an answer and am now ready to present my defense.

By the COURT: You may proceed.

JOSE ANTONIO BACA, being introduced on the part of the United States, testified, in Spanish, as follows:

Q. What is your full name?

A. Jose Antonio Baca y Pino.

Q. Where do you reside?

A. In Socorro, precinct number thirty.

Q. What is your age?

A. I will be eighty in the month of June.

50 Q. How long have you lived in Socorro and in that immediate vicinity?

A. All my life.

Q. Were you acquainted with Antonio Chaves in his lifetime?

A. Yes, sir.

Q. Were you acquainted with Francisco Baca in his lifetime?

A. Also; yes, sir.

Q. Who was Francisco Baca?

A. Juan Francisco Baca was a brother of mine.

Q. What, if any, official positions did he hold in that vicinity during his lifetime?

A. Alcalde.

Q. Do you know what is now called the Antonio Chaves grant in that community?

A. I know that they said it was from the Mesita Alamillo and below.

Q. You know where it is, do you not?

Mr. KNAEBEL: Objected to as leading.
By the COURT: Objection sustained.

Q. Have you been all over this grant?

A. I have been over it.

Q. Do you know of any springs on this grant?

A. Yes, sir.

Q. Commence and give us the different springs you have found, counting from the river to the west.

51 A. There are two, the Ojo de la Xinsa and the Ojo de la Jara.

Q. I will get you to state whether or not there is a spring in the arroyo?

A. There is one in the arroyo; it is the Ojo de la Xinsa, and the other is the Ariveche.

Q. Was the Ariveche known by any other name?

A. Not before—

Q. When was the name changed?

A. I do not remember. Some time ago there was a man who was herding some sheep there who was killed, and then the spring became to be known as the spring of Ariveche. I think it was about the year 1848.

Q. Why did they call the spring Ariveche?

A. I do know they killed a man there whose name was Ariveche. He was herding some sheep, and went to sleep at the spring and was killed there.

Q. When you were a young man, what was that spring called?

A. La Jara spring.

Q. Do you know why they called it La Jara?

A. Because there was great quantities of willow trees there.

Q. The other spring is called what—the one south of it?

A. The Ojo de la Xinsa.

Q. I will get you to state whether that grant when you were a young man was cultivated in any other places except along the river.

52 A. I never knew it cultivated. The cultivation of that grant, I think, first—I am not certain—was from the year forty-six or forty-eight.

Q. Was it ever cultivated until the acequia was taken out of the river?

A. Yes; the ditch was taken from the river by other people—the Lunas and Garcias.

Q. There never was any cultivation of that grant until the Lunas and Garcias took the acequia out?

A. That is as I know it.

Q. Do you know where Antonio Chaves lived?

A. Yes, sir; in Belen.

Q. Where did he die, if you know?

A. In Sabinal.

Q. Do you know whether he ever lived on this grant or not?

A. Never; he had a cattle ranch.

Q. Where was that?

A. At the Rancho de San Lorenzo, at the side of the river, below La Polvareda.

Q. Is that close to the river?

A. Yes; by the side of the river; the river has carried and swept it so there is nothing now.

Q. What official positions have you occupied in that community?

A. I was constitutional alcalde, justice of the peace, clerk, 53 and secretary of the ayuntamiento, probate judge, and several other positions.

Q. When you were a boy, a young man, state how far west the people who sold used to go from the mountains.

A. They would not go beyond the mountains, because the Indians would kill them there, and when they made excursions they would go to the La Xinsa and the La Jara, but would return soon.

Q. Then, as I understand you, they never went west of the Ojo de la Xinsa and La Jara on account of the Indians?

A. That's why I think they never went beyond.

Q. Did you ever hear when you were a boy of people going west of the Bear mountains for the La Jara spring?

A. No, sir; now I know that there is another Ojo de la Jara.

Q. You have heard it since these Lunas and Garcias got this property, have you not?

A. Now recently; but that is in the Navajo country, in La Gallina.

Cross-examination.

By Mr. KNAEBEL, for petitioner:

Q. Was your brother, Francisco Baea, justice of the peace and constitutional alcalde of Socorro?

A. Yes.

Q. Was he the alcalde who gave Antonio Chaves possession 54 of the Alamillo grant?

A. Antonio Chaves, who was placed in possession according to the order of the government.

Q. Is your brother living or dead?

A. He is dead.

Q. When did he die?

A. He died in 1880.

Q. A man of high character and reputation in the community in which he lived?

A. Yes; he always held positions.

Q. Have you ever seen the La Jara spring which is indicated on this map of the Alamillo grant on the northwest corner?

(Indicated to witness and witness shown map.)

Q. Have you ever been at the La Jara spring which has been laid down on this map?

A. I have been there many times, out camping.

Q. The spring called the Bear mountain, describe it—the Ojo de la Xinsa?

A. Is on the other side of the Bear mountain; the Ojo de la Jara is more to the north.

Q. How many times have you been at the Ojo de la Jara, near the mountain?

A. I do not remember.

Q. Have you been twice?

A. Yes.

55 Q. Have you been twenty times?

A. I do not know.

Q. Is that a very large spring?

A. No; that is a spring that rises in the cañon, among some willow trees; it is in the arroyo.

Q. Is it not situated in a piece of ground below and among willow trees, at least an acre in extent?

A. I think so; I have never measured it.

Q. Is your memory as good as it was formerly?

A. I think so.

Q. Did your brother, Juan Francisco Baca, know as much about the situation and occupation of this grant as you?

A. I think he knew more, because he was the judge. I never saw the grant, and he must have seen it.

Q. Was your brother better acquainted than you with the land grant and with its occupation?

A. Yes, sir.

Q. How old were you when Antonio Chaves died?

A. I was about forty.

Q. In what year did he die?

A. I do not remember.

Q. He died as much as twenty years ago?

A. I think so; it is not twenty; it is more.

Q. How old was he when he died?

A. I do not know.

56 Q. Did you know his wife?

A. Yes, sir; her name was Monica Pino.

Q. How many cattle did Antonio Chaves have at any time?

A. I cannot state; I never saw his stock; I saw his ranch, and I knew that he was a rich man, but I did not see his money.

Q. How far from this grant did you live at that time?

A. In Socorro; about twelve miles, more or less.

Q. You cannot state how many cattle he had?

A. No, sir.

Q. Did he pasture the cattle under the care of herdsmen?

A. Yes.

Q. And the herdsmen drove them about the pastures of that country?

A. In the meadows; yes.

Q. When did you first see La Jara spring, that is near the Bear mountain?

A. I do not remember. We were in the habit of going out camping and often went to that place.

Q. Did you go there when you were a boy?

A. Yes.

Q. You had many other boys with you?

A. Many people.

Q. How many people went with you?

A. About thirty men, more or less. We would go there at the instance of the people; we would go for the Indians.

57 Q. Didn't you say you went there hunting?

A. No, sir.

Q. Didn't you say you went out camping there?

OFFICIAL TRANSLATOR: I have translated the word "campañear," used by witness, as camping.

U. S. ATTORNEY: Which means scouting or out campaigning.

Q. How old were you when you were there as a boy?

A. I must have been twenty-five.

Redirect examination.

By Mr. REYNOLDS, U. S. attorney:

Q. How long will it take you to walk on foot from the Rio Grande del Norte west to what you know as the old La Jara spring, what you call now the Ariveche?

A. It is about a day.

Q. A day from where?

A. From La Polvareda.

Q. The Polvareda is below the Arroyo San Lorenzo, on the river—south, is it not?

A. Yes, sir; to the south.

Q. Did you when you were a boy know anything about the spring in the Bear mountains called La Jara—west of the ridge of the Bear mountains?

A. That is another spring; that they now call the Ojo de la Jara. There are several other springs that I have known afterwards and that I know now.

58 Q. Ask him if the spring that is west of the ridge of the Bear mountains is the spring that he went to when he was a boy or the spring that is north of the La Xinsa.

A. The Ojo del Oso is to the west of the La Xinsa or also, which is now called Ariveche.

Q. When you were a boy did you ever go to the spring which is west of Santa Rita—beyond Santa Rita?

A. No, sir; that from the year forty to this date—that the tribe (nacion) of Navajos begun to be under subjection—I begun to be acquainted with those springs.

Q. Do you mean the spring beyond Santa Rita that is now the Ojo de la Jara?

A. Yes, sir.

Q. When did you know this first under the name of Ojo de la Jara?

A. I do not remember; it is a few years ago.

Recross-examination.

By Mr. KNAEBEL, for petitioner:

Q. A man named Ariveche was killed near the Xinsa spring?

A. There at that spring that is called La Xinsa the man by the name of Ariveche, who was in charge of a herd of sheep, and he was killed.

Q. He was right at that spring when he was killed?

A. Yes; the Aricheche; they are about six or eight miles from the Ojo de la Xinsa to the Ojo de la Ariveche.

59 Q. In what direction is the Ojo de la Ariveche to the Ojo de la Xinsa?

A. To the north.

Q. Is it in an arroyo?

A. Yes, sir; there are some cañons and some hills between the two springs, and there is a good deal of timber.

Q. How old were you when Ariveche was killed?

A. I do not know; those things did not attract my attention.

Q. Had you in those days anything to do with those springs or that country about?

A. No; nothing.

Q. Did you have any business in that country about those springs?

A. Nothing; I only knew them when I went out on an expedition.

Q. Were there any willows growing at the springs called Ojo de la Ariveche?

A. There were many of them.

Q. Is that the reason the spring was called Ojo de la Jara?

A. I think so; now they call it Ariveche.

Q. How many times have you heard that spring called Ojo de la Ariveche?

Q. Was it always called Ojo de la Ariveche?

A. Of late years that is *why* I have heard it called.

Q. How many years did you ever hear that spring called Ojo de la Jara?

A. Before, that was the only name it had.

60 CAYETANO TAFOYA, being introduced on the part of the United States, testified, in Spanish, as follows:

By Mr. REYNOLDS, U. S. attorney :

Q. What is your full name?

A. Cayetano Tafoya.

Q. Where do you live?

A. La Polvareda.

Q. What is your age?

A. I am about sixty-seven or sixty-six.

Q. How long have you lived in that vicinity or the country around?

A. Since I was born.

Q. Did you know Anastacio Garcia during his lifetime?

A. Yes, sir.

Q. Did you know Antonio Chaves during his lifetime?

A. I knew him for a time when I was young.

Q. Did you know Juan Francisco Baca?

A. Yes, sir.

Q. Do you know what is called the Antonio Chaves grant?

A. Yes, sir; I have heard it said where it is—they have told me.

Q. Do you know where there are any springs located on that grant?

A. Yes, sir.

Q. What are they called?

A. Now they are called—one San Loranzo, another Ariveche, and another La Xinsa.

61 Q. Do you know whether or not any of these springs were ever known by any other name?

A. Yes, sir; one.

Q. Which?

A. The one that is now known as the Ariveche.

Q. What is the name it was formerly known by?

A. Ojo de la Jara.

Q. Were you ever at that spring when it was known as the Ojo de la Jara?

A. Yes, sir.

Q. How did the name happen to be changed?

A. It was changed because they killed a man at that Cañon de Ojo de la Jara, and from that time to now I have heard the people call that the Cañada de Ariveche.

Q. Do you know what the name of the man was who was killed at that spring?

A. I do not say what his name was; he was called Ariveche.

Q. Do you know when the first cultivation of this grant was? Has this grant ever been cultivated, to your knowledge, at any other place except along the Rio Grande river?

A. The only thing that I know is, at the Ojo de la Xinsa there was a purchaser with a ranch.

Q. How long ago was that?

A. I don't know how long.

62 Q. At recent years?

A. Many years ago.

Q. Was there any land plowed up and cultivated?

A. Yes; there was; a small patch.

Q. When was the first time that you knew of any cultivation along the Rio Grande?

A. I dug the ditch that is now called of the Alamillo.

Q. Who did you dig that ditch for?

A. For Rafael Luna, Ramon Luna, and Anastacio Garcia.

Q. Was there any cultivation there before that time?

A. No, sir.

Q. Was there any cultivation at any place on that grant before that time?

A. No, sir.

Q. Was that grant occupied by anybody before that time?

A. No, sir.

Q. About how old were you when you dug that ditch for the Lunas and Garcia?

A. Maybe I was twenty-five years old.

Q. How far west would your expeditions go when they went out to hunt Indians?

A. At one time, when I went out with the commandant to plow up the lands (*cortar la tierra*) and seek for Indian tracts, we were gone a month; these people were detailed by the governor for one month—

Q. They were detailed for what?

63 A. To protect the place that the Indians might come in.

Q. They didn't send you out there to plow up lands, did they, for wheat and corn, &c.?

A. No, sir.

Q. Tell the court what you meant by "*cortar la tierra*."

A. To see if there are any Indian tracts on the lands.

Q. Did you ever hear of a spring in the Bear—beyond the Bear mountains—when you went out on these expeditions, called the Ojo de la Jara, and before you dug the acequia for the Lunas and the Garcias, the other side of the Santa Rita?

A. No, sir.

Cross-examination.

By Mr. KNAEBEL, for petitioner:

Q. Are you not entirely ignorant of the occupation of this land from the time of the grant for a period of ten years or more?

A. Yes; I was small; I think so.

Q. If the grant was made in 1825 and possession then given to Antonio Chaves, you were only about two years old then, were you not?

A. Yes, sir.

Q. Were there passes and places of ingress and egress by which the savages and Navajos came over to the Rio Grande?

A. There were at the Puerto de Magdalena and the Carrizo.

Q. Are these places in the mountains?

64 A. Yes; in the Magdalena mountains.

Q. Were you ever at the cattle ranch occupied by Antonio Chaves on the grant?

A. Yes, sir; at one time I was there.

Q. Did Antonio Chaves transfer the actual possession of that grant to Garcia, Rafael Luna, and Ramon Luna?

A. I heard it said.

Q. And don't you know that Anastacio Garcia lived on that grant after Chaves left it?

A. Yes, sir.

Q. Is Anastacio Garcia dead?

A. Yes, sir.

Q. How long ago did he die?

A. It is a very short time ago, a few months ago.

Q. Did he not live on that grant all his life, after he got it from Chaves?

A. Yes, sir.

Q. When you were a boy did people have many cattle in that country?

A. No, sir; at one time, when I was young, I saw this many Chaves and his sons.

Q. Did he have many cattle there?

A. Yes, sir; many.

Q. Did he have them under the charge of herdsmen?

A. So I heard it said.

65 Q. In those days it was customary for herdsmen to carry arms to protect themselves against the Indians?

A. Yes, sir.

Q. Did they pasture herds where they could find pasture and water?

A. Yes; from the San Lorenzo below to the side of the river they would pasture.

Q. They would pasture on the plains?

A. Yes, sir.

Q. What is the character of the grass there, on this Antonio Chaves grant?

A. Grama.

Q. Have you ever seen a map of that grant?

A. No, sir, until this morning; I do not know if it is the map.

Q. Were you well acquainted with Anastacio Garcia in his lifetime?

A. Yes, sir.

Q. Don't you know that he claimed this land to be bounded on the east by the Rio Grande?

A. Yes, sir.

Q. And on the west by the La Jara spring of the Oso mountains?

A. He said the Ojo de la Jara; I don't know what particular locality he called the Ojo de la Jara.

Q. How many years have you heard the spring near Bear mountain called the Ojo de la Jara?

66 A. No, sir; I have heard people call over there the Cerro Colorado the La Jara.

Q. Do you know the La Jara spring which is near the Bear mountain?

A. No, sir.

Redirect examination.

By Mr. REYNOLDS, U. S. attorney :

Q. From whom did you first hear that there was a grant there?

A. When I heard it said about that grant I was very young.

Q. Who first told you about the boundaries?

A. I do not know who told me first; but with my cousin, Anastacio Garcia; he and I would converse and he would tell me.

Q. Was that before or after he bought it?

A. After he bought it.

Q. Did you ever see Antonio Chaves pasture any stock on that grant?

A. Yes, sir.

Q. What part of it?

A. There in the grove of the river.

Q. What river?

A. Rio Grande.

Q. Did you ever see him pasture any stock as far out as the Salado?

A. I do not know where they call it.

Q. As far as the Carrizo and on the Salado, did you ever see or know of Antonio Chaves to pasture stock out that far?

67 A. No, sir.

Q. That section of the country was overrun with Indians, was it not?

A. Yes, sir; by the Indians.

L. M. BROWN, being introduced on the part of the defendant, testified, in English, as follows:

Direct examination.

By Mr. REYNOLDS, U. S. attorney :

Q. Where do you reside?

A. Socorro.

Q. What is your occupation?

A. United States deputy surveyor.

Q. I will get you to state whether or not you have had occasion more than once to examine the topography of the country of what is called the Antonio Chaves or Arroyo de San Lorenzo grant?

A. Yes, sir; I have had one occasion to make a topographical survey of it.

Q. Have you examined it recently at my request?

A. Yes, sir.

Q. I will get you to state whether or not you examined it in con-

nection with the two witnesses who have just preceded you, Jose Antonio Baca and Cayetano Tafoya.

68 A. Yes, sir.

Q. I will get you to state if you know the location of the various springs on that grant as claimed.

A. Yes, sir.

Q. Do you know where to locate the spring that is now called the La Xinsa spring?

Mr. KNAEBEL: I ask that witness be examined as to the source of his information, whether by talking with these other witnesses, with other people, or from whom.

No ruling.

A. Yes, sir.

Q. Do you know which is now called the Ariveche spring?

A. Yes, sir.

Q. And do you know what is now called the La Jara spring, that lies out in the Bear mountains?

A. Yes, sir.

Q. Do you know the location of the Arroyo de San Lorenzo?

A. Yes, sir.

Q. Do you know the location of the Arroyo Salado?

A. Yes, sir.

Q. Do you know the location of the Bear mountains?

A. Yes, sir.

Q. Now, where—designate it on this map—the La Xinsa spring, as it is now known?

Map given witness.

69 A. In this valley marked La Xinsa valley, about a mile and a half from the south line of the grant as it appears on this map.

Q. Where is the Ariveche with reference to the La Xinsa?

A. It is north and a little west of the La Xinsa, about five miles, or little less, west and north of the La Xinsa spring.

Q. Is there a spring in the arroyo near it?

A. I think the San Lorenzo is *the* in the arroyo near it.

Q. I will get you to state what is the condition of the country around this Ariveche spring.

A. There are a quantity of willows.

Q. Have you ever been to this La Jara spring that is west of the Bear mountain?

A. Yes, sir.

Q. What is the condition of the country there with reference to trees, &c.?

A. There are a few willows.

Q. As compared with the Ariveche springs—with reference to the Ariveche spring and the Ojo de la Jara, in the Bear mountains—give the comparative quantity.

A. The *the* Ojo de la Ariveche has the greater growth.

Q. How much more?

A. Five to seven times as much.

Q. Did you go to these springs with these two witnesses who have just preceeded you?

70 A. Yes, sir.

Q. I will get you to state how much of the grant is now under cultivation.

A. There are some Americans that have some farms there, who claim it as government land, in front and along the river; there may be possibly one hundred to seventy-five acres. At the La Xinsa spring there is probably ten acres.

Q. I will get you to state when was the first of that cultivation.

A. West of the river was put in cultivation within the last six years.

Q. How long have you known the grant?

A. Since eighty-one.

Q. Has the cultivation west of the river commenced since you knew the grant?

A. Yes, sir.

Q. Has it been cultivated anywhere else except the river?

A. Yes, sir; up here (indicating on map) at another spring in the northwest corner of the grant, as shown on this plat.

Q. How recent is that cultivation?

A. Within the last four years.

Cross-examination.

By Mr. KNAEBEL, for petitioner:

Q. For whom did you make a topographical map?

A. H. M. Bond.

71 Q. At the time they purchased an interest in them?

A. Yes, sir; previous to that I had knowledge of them.

Q. On your topographical map did you run to the La Jara spring as it is in the Government survey?

A. I think I did. I don't recollect. It was eight years ago when I made that survey.

Q. Did you make that survey for the parties who sold to Mr. Bond?

A. I do not know. The field-notes were handed to me and I run the lines according to them, and I do not recollect anything about — nor the different boundaries.

Q. Look at the field-notes of the Antonio Chaves grant (handing witness a book) of the Government survey. It is certified to as being correct. Did you follow that?

A. Yes, sir.

Q. Did you find the monuments as laid down there?

A. No, sir.

Q. Did you find the La Jara spring, as indicated there?

A. Yes, sir; in the northwest corner of the survey.

Q. At that time did you know anything as to any error in the selection of the La Jara spring in the northwest corner of the survey?

A. No, sir; that did not interest me at that time. I merely followed the field-notes they furnished me, and that was all.

Q. In the topographical survey, have you it down as on the northwest corner?

72 A. I did; that is where it was located.

Q. On that occasion did you say anything to Judge Bond contrary to the statements of the field-notes?

A. I think I told him that I found a quarter of a mile mistake in the survey.

Q. Is not the spring at the northwest corner of the grant as surveyed by the United States the only La Jara spring known on the grant, except what these two witnesses say?

A. No, sir.

Q. Explain what you mean.

A. You ask me if these two witnesses were not the only ones; they are not the only ones; there have been others talk about it.

Q. Did you have any of this information when you made this topographical survey?

A. No, sir.

Q. At that time you believed the only La Jara spring was that indicated on the United States survey?

A. I knew there were two La Jara springs, but I did not know the location of one, and I was not sent out there to go over the boundaries as called for in the grant, but merely to retrace the Government survey.

Q. But at the time you made this topographical survey the spring of La Jara taken from the United States survey was 73 the only one that you know of having any relation to this grant?

A. Yes, sir.

Q. Do you speak Spanish?

A. I speak it some, but not fluently or correctly.

Q. Where is your topographical map?

A. I turned it over to Judge Bond.

Q. Have you a copy of it?

A. No, sir.

Q. Will you indicate where upon these field-notes (giving witness same book) where the La Jara spring is mentioned?

A. Here (indicating), on pages thirty-three and thirty-four.

Witness excused.

Mr. REYNOLDS: I offer in evidence the testimony of Juan Francisco Baca, who delivered juridical possession of the grant, taken before the surveyor general, said witness, as has been testified to, being now dead, and also I offer in evidence the testimony of Francisco Chaves, saying he was present when the above testimony was taken.

Exhibit A for the defendant.

Mr. REYNOLDS: I shall have a map drawn, as shown by the testimony of these witnesses, of this grant.

And the Government rests.

74 Mr. KNAEBEL: We are here, if the court please, to discuss this title, so far as the title papers, genuineness, *and &c.*, are concerned; but it appears a serious question has arisen from the testimony offered on behalf of the Government as to the extent of the boundaries. Before the case is finally submitted I would like to be allowed to present testimony on this question. Not being prepared and having all along relied on the lines as established by the survey made by the Government, we shall ask for time.

Mr. REYNOLDS, U. S. attorney: I offer no objection.

By the COURT: This cause will, then, go over to the next term of court.

75 And be it farther remembered that on the 13th day of March, A. D. 1893, the same being the 4th day of the March term, the following proceedings were had, to wit:

The above-entitled cause coming on to be farther heard, there appeared John H. Knaebel, Esq., attorney for the petitioners, and the defendants by Matt. G. Reynolds, Esq., United States attorney. Witnesses were examined and documentary evidence was introduced for and on behalf of the defendant, and pending the same the cause was continued to the next term.

76 And be it further remembered that thereafter, to wit, on the 11th day of July, A. D. 1893, a motion was filed in the said office in the words and figures following, to wit:

77 UNITED STATES OF AMERICA, *ss*:

In the Court of Private Land Claims, Santa Fé District, July Term, 1893.

MARTIN B. HAYES, Plaintiff, }
vs. } No. 37.
 THE UNITED STATES, Defendant. }

Motion.

Comes now the United States, by its attorney, Matt. G. Reynolds, and moves the court to correct the entry of record on the 13th day of December, 1892, made in said cause, which said entry is a submission of said case to the court, and which was inadvertently and by mistake entered by the clerk, and the same be made to show that upon the introduction of proof on behalf of the plaintiff said cause was continued for further hearing on behalf of the United States.

(Signed)

MATT. G. REYNOLDS,
U. S. Attorney.

78 And be it further remembered that thereafter, to wit, on the 29th day of July, A. D. 1893, there was filed in the said office the petition of the plaintiff for a commission to examine Hiram G. Bond as a witness; which petition is in the words and figures following, to wit:

79 In the United States Court of Private Land Claims.

MARTIN B. HAYES }
vs.
THE UNITED STATES OF AMERICA. }

To the Honorable Joseph R. Reed, chief justice of the United States court of private land claims:

Your petitioner, Martin B. Hayes, plaintiff in the above-entitled cause, respectfully shows unto the said court as follows, to wit:

The testimony adduced by the defendant in the said case regarding the location of La Jara spring was a great surprise to your petitioner, inasmuch as in his dealings with the Antonio Chaves grant for a period of upwards of twenty years last past he had never, until the giving of the said testimony, heard even the slightest intimation that the northwest corner of the said property had been erroneously located by the U. S. surveyor general for New Mexico, and he and his immediate vendors of the said property, namely, Laura A. Bond, Charles D. Arms, and Latham L. Higgins, bought the said property at an expense now exceeding, with interest, the sum of one hundred thousand dollars, upon the faith of the true location of the said corner by the said survey and of the declarations and statements of former owners of the said property, and especially of Anastacio Garcia, who was in actual possession of the said property, owing one undivided third part thereof when he sold his said interest to the said Bond, Arms, and Higgins.

The said Anastacio Garcia is now dead. Hon. Hiram G. 80 Bond, husband of the said Laura A. Bond, acted for the said purchasers of the said Garcia interest, and your petitioner is informed and believes that while the said Hiram G. Bond was actually upon the said property, personally negotiating with the said Garcia for the said purchase of the said interest, and immediately before the said conveyance thereof, the said Garcia pointed out to the said Hiram G. Bond the La Jara spring named in the granting decree herein and located the same at the point at which "La Jara spring" is laid down on the said survey.

The said Hiram G. Bond resides at Seattle, in the State of Washington, and is unable to appear and attend personally before this court. He is an important and material witness in behalf of your petitioner upon the trial of this cause, and by him, as such witness, your petitioner expects to prove competent declarations made as aforesaid by the said Garcia to the said Hiram G. Bond respecting the boundaries and boundary calls of the said Antonio Chaves grant, and especially the true situation and location of the La Jara spring named in the said granting decree, and also the said Bond's personal knowledge and examination of the said boundaries and boundary calls, and such other facts within the knowledge of the said Bond as are relevant to the issues in this cause.

Wherefore your petitioner prays an order for the taking of the deposition of the said Hiram G. Bond as a witness in this cause, at

Seattle, at a time to be fixed by the court, before Hon. William H. Brinker, of Seattle, United States attorney for the State of Washington, or before some other competent authority, and that a commission may be issued out of this court accordingly.

Dated July 25, 1893.

(Signed)

MARTIN B. HAYES.

(Signed) JNO. H. KNAEBEL, *Pfiff's Atty.*

81 STATE OF COLORADO, }
County of Arapahoe, } ss:

Martin B. Hayes, being duly sworn, deposes and says that he is the petitioner described in and who subscribed the foregoing petition; that he has read the said petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on his information and belief, and that as to those matters he believes it to be true.

(Signed)

MARTIN B. HAYES.

Subscribed and sworn to before me this 25th day of July, 1893.
My commission expires April 12th, 1897.

[SEAL.]

CHAS. M. BICE,
Notary Public.

82 And be it further remembered that afterwards, on the same day, to wit, the 29th day of July, A. D. 1893, there was made and entered in the said cause an order in the words and figures following, to wit:

83 At a stated term of the United States court of private land claims, held at the city of Santa Fé, on the — day of July, A. D. 1893.

Hon. Joseph R. Reed, chief justice, presiding.

MARTIN B. HAYES

vs.

THE UNITED STATES OF AMERICA.

Upon reading and filing the petition of the plaintiff, dated July 25th, 1893, and after hearing Mr. Knaebel, of counsel for the plaintiff, and Mr. Reynolds, U. S. attorney, of counsel for the defendant—

It is ordered that the prayer of the said petition be granted, and that a commission issue out — and under the seal of this court, directed to F. B. Tipton, Esquire, notary public, of the city of Seattle, State of Washington, empowering the said notary public to take and certify the deposition of Hiram G. Bond, of Seattle, Washington, as a witness in this cause on behalf of the plaintiff, upon such interrogatories and cross-interrogatories as shall within the next five days be filed in this cause with the clerk of this court; such interrogatories and cross-interrogatories to be annexed to the said commission and (with the said deposition) to be returned therewith to the said clerk; the said deposition to be taken at the office of the said

notary, in the said city of Seattle, on the eighth day of August, A. D. 1893, at eleven o'clock in the forenoon, and on such subsequent days as may be convenient.

84 And be it further remembered that, pursuant to the said order, such proceedings were had that the witness, Hiram G. Bond, was examined on interrogatories before F. B. Tipton, a notary public, at Seattle, Washington, and the deposition so taken and also the commission, interrogatories, objections, and other matters constituting the said proceedings were thereafter filed in the said office, to wit, on the 26th day of October, A. D. 1893, and are in the words and figures following, to wit :

85 The President of the United States of America to F. B. Tipton, notary public, rooms 427-428 Baily building, cor. Second and Cherry streets, Seattle, Washington, Greeting :

Know ye that we, in confidence of your prudence and fidelity, have appointed you a commissioner, and by these presents do give you full power and authority diligently to examine, upon his corporal oath, before you to be taken, Hiram G. Bond, now sojourning at Seattle aforesaid as a witness on the part of the plaintiff in a certain cause now pending, undetermined, in the court of private land claim of the United States of America, sitting in the city of Santa Fé, Territory of New Mexico, wherein Martin B. Hayes is plaintiff and The United States of America is defendant, on the interrogatories hereunto annexed.

And we do require you, before whom such testimony may be taken, to reduce the same to writing and to close it up, under your seal, directed to James H. Reeder, clerk of the court of private land claims, &c., Santa Fé, New Mexico, and that you return the same, when executed as above directed, annexed to this writ, with the title of the cause endorsed on the envelope of the commission, into the said court of private land claims, &c., before the justices thereof, with all convenient speed.

[SEAL.] JAMES H. REEDER, Clerk,
By IRENEO L. CHAVES, Deputy.

JNO. H. KNAEBEL,
Pltf's Atty, 404 Equitable Building, Denver, Colorado.

86 In the U. S. Court of Private Land Claims.

MARTIN B. HAYES }
vs. }
THE UNITED STATES OF AMERICA. }

Interrogatories to be annexed to the commission in the above-entitled cause, and to be propounded on the part of the plaintiff to Hiram G. Bond, a witness.

First interrogatory. What is your name, age, and occupation, and where do you reside?

Second interrogatory. Do you know the plaintiff, and how long have you known him, and are you one of the grantors in the deed of conveyance in evidence in this cause, under which he acquired title to the Antonio Chaves grant?

Third interrogatory. Are you acquainted with the tract of land in the county of Socorro, New Mexico, which is known as the "Antonio Chaves grant;" and, if so, how long have you been acquainted with the said property?

Fourth interrogatory. If you were concerned in negotiating for the purchase of the said property from Anastacio Garcia and the heirs of Ramon Luna and Rafael Luna, state whether or not in the course of the said negotiations, and at what time, the said Anastacio Garcia, while upon the said property, made any declarations to you respecting its boundaries and boundary calls in indicating the same to you; and, if yea, what declarations, and when were they made?

87 Fifth interrogatory. If the said Anastacio Garcia, in the course of the said negotiations and while he and you were personally upon the said property, made to you any declarations respecting the situation and location of the La Jara spring named in the grant title papers of the said grant, state what those declarations were, and also whether or not the said Anastacio Garcia on such occasion or occasions pointed out to you the situation of the said spring, and, if yea, at what point he so indicated the same to be.

Sixth interrogatory. If, pending the said negotiations and while you and the said Anastacio Garcia were personally present upon the said land, the said Anastacio Garcia made to you any declarations as to the possession, occupation, and claim of the said property by the grantee, Antonio Chaves, and by himself and his co-owners, Ramon Luna and Rafael Luna, what did he so declare to you, and when?

Seventh interrogatory. Were the declarations and statements so made to you by the said Anastacio Garcia made before or after the purchase of the said property and the payment of the purchase-money by Laura A. Bond, Charles D. Arms, and Latham L. Higgins?

Eighth interrogatory. In what capacity and at whose request were you acting in making the said negotiations?

Lastly. Do you know of any other matter or thing touching the matters in question that may tend to the benefit or advantage of the said plaintiff? If so, declare the same fully and at large as if you had been particularly interrogated thereto.

(Endorsed on the back:) Filed July 29th, 1893. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

88

In the U. S. Court of Private Land Claims.

MARTIN B. HAYES }
 vs. }
 THE UNITED STATES OF AMERICA. }

The United States declines to file any cross-interrogatories for the reason that the testimony sought, as indicated by the interrogatories, seems to be a conversation between the purchaser or his or their agent and their vendors, and has no tendency to establish against the United States the validity of the original grant and its boundaries, to which the United States was not a party and by which it is in no way bound.

That the same occurred long subsequent to the treaty of Guadalupe Hidalgo, as of which date the rights of the plaintiff as against the United States must be adjudged, and the same can in no way affect the rights and obligations of the United States standing in the place of the Mexican government, nor to establish its use and occupation under the Mexican government prior to the treaty of Guadalupe Hidalgo.

The United States objects to the following interrogatories, to wit, fourth, fifth, sixth, seventh, eighth, and lastly, and for grounds of objection says, the same call for testimony in its nature hearsay, and also for representations made by the vendor to vendee as to the title and possession and boundaries as claimed by the plaintiff's vendor, by which the United States is in no way bound.

MATT. G. REYNOLDS,
U. S. Attorney.

It is stipulated that the deposition of Hiram G. Bond may be taken upon the interrogatories, subject to the foregoing objections and reservations, and this stipulation shall be attached thereto and returned by the commissioner.

JNO. H. KNAEBEL,
Attorney for the Plaintiff.
 MATT. G. REYNOLDS,
U. S. Attorney.

89 In the United States Court of Private Land Claims.

MARTIN B. HAYES }
 vs. }
 THE UNITED STATES OF AMERICA. }

Deposition of Hiram G. Bond, Taken Pursuant to Commission Hereunto Annexed.

STATE OF WASHINGTON, }
 County of King, }
 88:

Be it remembered that, pursuant to the commission for the taking of depositions, hereunto annexed, and — the 19th day of October, A. D. 1893, at my notarial office, in rooms 427 and 428, in the Bailey

building, at the corner of Second and Cherry streets, in the city of Seattle, in the State of Washington, before me, the undersigned, F. B. Tipton, a notary public in and for the State of Washington, duly commissioned, appointed, qualified, and sworn, personally appeared HIRAM G. BOND, the person named in said commission and produced as a witness on behalf of the plaintiff in said action, now pending in said court, who, being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified upon the interrogatories hereto annexed as follows, to wit:

First interrogatory. What is your name, age, occupation, and where to you reside?

Answer. My name is Hiram G. Bond; my age is fifty-five years; my occupation is that of a lawyer; I reside in Seattle, Washington.

Second interrogatory. Do you know the plaintiff, and how long have you known him, and are you one of the grantors in the deed of conveyance in evidence in this cause, under which he acquired title to the Antonio Chaves grant?

90 Answer. Yes, sir; I know the plaintiff. I have known him about twenty-five years. I am one of the grantors named in the deed of conveyance described.

Third interrogatory. Are you acquainted with the tract of land in the county of Socorro, New Mexico, which is known as the "Antonio Chaves grant;" and, if so, how long have you been acquainted with the said property?

Answer. I am acquainted with the property and have been since about 1880.

Fourth interrogatory. If you were concerned in negotiating for the purchase of the said property from Anastacio Garcia and the heirs of Ramon Luna and Rafael Luna, state whether or not in the course of the said negotiating and at what time the said Anastacio Garcia, while upon the said property, made any declarations to you respecting its boundaries and boundary calls in indicating the same to you; and, if yea, what declarations, and when were they so made?

Answer. I was the party who negotiated the purchase of 91 said property. Mr. Garcia did describe the boundaries of the property to me at his house, upon the property, prior to my purchasing the same for myself and associates, and at the time I made the inspection of the property pending such negotiations. I cannot now recall the date, but I would say it was two or three months before the actual transfer of the property; it may have been more and it may have been less. He made statements to me regarding the boundaries of said property, and expressly pointed out to me the northeastern boundary point, which, as I recollect it, was near or upon a little mesa on the Rio Grande river, and he also pointed out to me the boundary line as it ran through what is known as the San Lorenzo arroya. He also pointed out to me upon a map which I had in my possession at the time, that had been made in the surveyor general's office of the Territory, the La Jara spring, located at the northwest corner of said property. Said spring was about twenty-eight miles distant from the Rio Grande river as it appeared

upon the map. He informed me that he could not give me the precise location of the corner, but that it had been settled by a rule in the Land Department in Washington to be point made by the junction of a line running directly south from the La Jara spring with the line running east and west on the southerly line of said grant, to wit, commencing on the Rio Grande river and running through the San Lorenzo arroya to the westerly boundary of the property. He also enumerated to me the various springs upon the property, one of which I remember he called the La Jensal spring, and another the name of which I have forgotten, but it was described as being the spring used at the time by a man named Fowler, who had squatted upon the property and was pasturing some cattle

92 thereon. I had immediately previous to this interview made a trip over the property and had personally examined the most of it. I talked with Mr. Garcia in detail with reference to the coal and mineral found upon the property, and also with reference to the quality of the grasses on Bear mountain during the winter.

Interrogatory fifth. If said Anastacio Garcia, in the course of the said negotiations and while he and you were personally upon the said property, made to you any declarations respecting the situation and location of La Jara spring named in the grant, title papers of the said grant, state what those declarations were and also whether or not the said Anastacio Garcia on such occasion or occasions pointed out to you the situation of the said spring; and, if yea, at what point he so indicated the same to be.

Answer. I have answered the question in the preceding answer. I might add, however, that at said time I also especially asked him whether or not there had ever been any other spring by the name of La Jara spring.

He said there never had been, to his knowledge. I then inquired of him why it was that Mr. Hayes, who had a bond from him of the property, had applied to the surveyor general for a resurvey of the boundaries of the property, when they had been once established by a Government survey. He said that he had understood that there had been an effort to extend the boundaries of the grant some miles west of the line claimed by him, and

an effort made to give the name of La Jara spring to another

93 spring located at the point to which it was intended that the boundary should be extended. He said the effort failed, however, because there was no evidence that the spring indicated was ever known as the La Jara spring, nor was there any evidence that any claim was ever made to the property extending beyond the westerly line of the boundary of the grant as indicated by the first Government survey.

Sixth interrogatory. If, pending the said negotiations and while you and said Anastacio Garcia were personally present upon the said land, the said Anastacio Garcia made to you any declarations as to the possession, occupation, and claim of the said property by the grantee, Antonio Chaves, and by himself and his co-owners, Ramon Luna and Rafael Luna, what did he so declare to you, and when?

Answer. He made such declarations, and during the negotiations leading up to said purchase of said grant I directly questioned

with respect to his title to the property. He said that he had been familiar with the property for years before he purchased it of Minico Pino, the widow of Antonio Chaves, to whom the grant was made by the Mexican government. He said that Antonio Chaves had occupied and been on the property himself for about twenty-five years, and that he himself and Rafael and Ramon Luna, who were his co-owners, together with their heirs after their decease, had been in possession of and occupied the property ever since; that there had never been any dispute or question of his right to

94 possess and occupy said property. He said he was prepared to give me a warranty deed against everybody but the United States, and that he considered his title perfect under the treaty made by the General Government with the government of Mexico, recognizing all titles to property that were valid under the Mexican laws.

Subsequently to the purchase of the property by himself and associates and pending the litigation by us against one Bruton, who had succeeded the Mr. Fowler before referred to as a squatter upon said property, I had occasion to again call upon Mr. Garcia for some information respecting the title to the property, and at that time again discussed the question of its boundaries, when he again affirmed what he had before told me respecting them. Prior to the purchase of said property I conversed with a number of Mexicans as to the history of the grant and the title to the property, and especially with one Antonio Abaytia; also with an old man by the name of Bacca, whose first name I do not now remember. Both of them assured me that there was no question of the title of the property, and that the boundaries as marked upon the map were those that had been always recognized by the community as the correct boundaries. I have on three several occasions visited different parts of the grant and talked with people living near, and some of them who were living temporarily upon it, and I never heard mentioned the name of any spring being called La Jara spring other than the one first indicated by me. Names were given to every spring upon the property, but none of them except the one at the northwest corner of the property were ever called La Jara.

95 Seventh interrogatory. Were the declarations and statements so made to you by the said Anastacio Garcia made before or after the purchase of the said property and the payment of the purchase-money by Laura A. Bond, Charles D. Arms, and Lathan L. Higgins?

Answer. They were made both before and after, as before stated.

Eighth interrogatory. In what capacity and at whose request were you acting in making said negotiations?

Answer. I acted in the capacity of agent for said Charles D. Arms and Lathan L. Higgins, and I was acting for myself and wife, Laura A. Bond, and at the request of all the parties named.

Lastly. Do you know of any other matter or thing touching the matters in question that may tend to the benefit or advantage of

the said plaintiff? If so, declare the same fully and at large as it you had been particularly interrogated thereto.

Answer. I recall nothing at present.

(Signed)

HIRAM G. BOND.

Subscribed and sworn to before me this 19th day of October,
A. D. 1893.

(Signed)

[L. S.] *Notary Public in and for the State of Washington,
Residing at the City of Seattle, in said State.*

96 STATE OF WASHINGTON, }
County of King, } ss:

I, F. B. Tipton, a notary public in and for the State of Washington, duly appointed, commissioned, qualified, and sworn, do hereby certify that the above and foregoing deposition was taken before me and reduced to writing by myself, at my notarial office aforesaid, in rooms 427 and 428, in the Bailey building, at the corner of Second and Cherry streets, in the city of Seattle, in said State of Washington, on the 19th day of October, A. D. 1893, pursuant to the commission hereunto annexed; that the above-named witness, Hiram G. Bond, before examination, was sworn by me to testify to the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read by said witness and then subscribed by him.

Witness my hand and official seal this 19th day of October, A. D. 1893.

[L. S.]

F. B. TIPTON,
*Notary Public in and for the State of Washington,
Residing at the City of Seattle, in said State.*

Notarial Fees.

Swearing witnesses.....	\$ 25
Certificate.....	50
Postage05
Copying 21 folios, at 25 cts. per f.....	5 25
	—
	\$6 05

Paid by plaintiff.

Endorsed: "G. No., —;" "T. No. 16." "Filed in the office of the clerk, court of private land claims, Oct. 26, 1893. Jas. H. Reeder, clerk, by I. L. Chaves, deputy."

97 And be it farther remembered that on the 13th day of November, A. D. 1893, the same being the 1st day of the November term, the following proceedings were had, to wit:

The above-entitled cause was set for trial on the 23rd day of November, A. D. 1893.

98 And be it farther remembered that on the 23rd day of November, A. D. 1893, the same being the 10th day of the November term, the following proceedings were had, to wit:

The above-entitled cause being called up for trial, there appeared John H. Knaebel, Esq., and James E. Fitch, Esq., for plaintiff, and Matt. G. Reynolds, Esq., for the defendant, The United States, and, announcing themselves ready for trial, the same was proceeded with on the pleadings presented, the same having been put at issue by answer of the United States; and plaintiff thereby put to the proof of the allegations of his petition, and to properly deraign his title and show such a title entitling him to have the grant confirmed, introduced documentary and oral testimony and proof to sustain and support the same, and the hearing of said cause not being completed, the court took a recess until two o'clock p. m.

The — resumes its session at two o'clock p. m. The hearing of this cause was resumed, all the attorneys in the cause being present. Farther oral and *coumectary* proof was introduced and, the *court* not being concluded, when the court adjourned until tomorrow, at ten o'clock a. m.

99 And be it farther remembered that on the 24th day of November, A. D. 1893, the same being the 11th day of the November term, the following proceedings were had, to wit:

The hearing of this cause was resumed, all the attorneys in the cause being present; farther proof was offered and the United States presented in farther defense additional oral proof, and argument was commenced, was not concluded, when the court took a recess until two o'clock p. m.

The court resumed its session at two o'clock p. m., and the argument of said cause No. 37 was proceeded with and concluded on behalf of the plaintiff, when the court adjourned until ten o'clock on tomorrow morning.

100 In the Court of Private Land Claims, Santa Fé District,
November Term, 1893.

MARTIN B. HAYS, Plaintiff,	vs.	} No. 37. "Antonio Chaves
THE UNITED STATES, Defendant.		

This cause having been adjourned on the 16th day of March, 1893, until the next term of the court, to allow plaintiff to introduce testimony in rebuttal of that offered by the Government in this cause, the same was called up on this day, to wit, the 23rd day of November, 1893, the same being the ninth (9) day of the November term, 1893, and there appeared—

John H. Knaebel, Esquire, and James G. Fitch, Esquire, for petitioner.

Matt. G. Reynolds, Esquire, U. S. attorney, for the defendant.

Mr. REYNOLDS: In order that the proceedings may be kept regu-

lar, I ask leave to introduce some more oral testimony, and then petitioner may proceed with his case.

There was no objection.

101 MELQUIADES LUNA, sworn as a witness, testified on behalf of the United States, in English, as follows:

Examination by Mr. REYNOLDS:

Q. Where do you live?

A. Socorro.

Q. What is your age?

A. Thirty-five.

Q. Who was your father?

A. Rafael Luna.

Q. Have you lived in that country all your lifetime?

A. I have lived in Socorro for thirteen years.

Q. Have you lived in that vicinity all your lifetime?

A. Yes; and I have lived at Los Lunas.

Q. Are you acquainted with a tract of land lying north of Socorro, and what is commonly called the Antonio Chaves grant?

A. Yes.

Q. How long have you known it?

A. Thirty years or so.

Q. Have you had occasion to go over it from time to time?

A. I have been over a little of it.

Q. Have you had occasion to herd stock over it?

A. I don't know whether it is in or outside of the grant; I had a ranch there, on what they call the Carbon Piedra, near Santa Rita.

102 Q. Do you know the names of any of the springs on that grant?

A. Yes; La Jara or Araveche, Lorenzo, and another spring there; I don't know the name of it.

Q. Do you know whether the Ariveche spring was ever known by any other name or not?

A. I have heard so.

Q. From whom?

A. I have heard it from several of the old fellows. I don't remember exactly who said, but I heard it called the La Jara.

Mr. KNAEBEL: I object to the answer as incompetent, irrelevant, and not responsive to the question, and as hearsay.

By the COURT: Admitted subject to the objection.

Q. Do you know whether your father was one of the owners of this grant, at any time?

A. Yes, sir.

Q. Did you ever hear your father say anything about it?

A. No, sir; I did not.

Q. Did you ever hear him say anything about the boundaries of the grant?

A. No, sir.

Q. Did you ever hear him say anything about the names of the springs?

A. Yes, sir.

Q. What?

103 Mr. KNAEBEL: I object to the questions for same reasons as stated above.

By the COURT: Admitted subject to the objection.

Q. Do you know Anastacio Garcia?

A. Yes, sir; in his lifetime.

Q. When did he die?

A. I don't know.

Q. Do you know whether he was one of the owners of this grant at any time?

A. Yes, sir.

Q. Did you ever have any conversation with him with reference to this line?

A. We had a little conversation.

Q. What was said?

Mr. KNAEBEL: Objected to.

Q. Did you ever hear him say what *was* the west boundary of the grant was when he owned it?

Mr. KNAEBEL: I object to it on the ground of incompetency and hearsay, and that no proper foundation has been laid.

By the COURT: Admitted subject to the objection.

Q. What did he tell you?

A. That the Ariveche was the west line of the grant.

Q. Were you at the spring at that time?

A. We were in a round-up there.

104 Q. Was there anything else said about the boundary of the grant—any other boundary?

A. No, sir.

Q. Do you remember when that was?

A. In 1883.

Mr. KNAEBEL: I might suggest to the court that was long after Anastacio Garcia had sold the property.

Q. What direction is the Ariveche spring from the La Jinza?

A. Little north.

Q. Do you know anything about the La Jara spring lying west of the Santa Rita?

A. There is a spring there; I think is called La Jara.

Q. What is the condition of the Ariveche with reference to the growth of brush and willows?

A. There are some willows there.

Q. Have you ever been to the other place?

A. No, sir.

CROSS-EXAMINATION BY MR. KNAEBEL:

Q. What is your business?

A. Stock-raising and farming.

Q. Do you know Jose D. Chaves?

A. Yes.

105 Q. What is the name of his wife?

A. Margarita Luna Chaves.

Q. What relation is she to you?

A. First cousin.

Q. Do you remember when Judge Hiram P. Bond and I were in Los Lunas and vicinity taking deeds of the Rafael Luna interest in the Alamillo grant?

A. No, sir.

Q. Don't you know that you participated in the sale of that grant to Hiram P. Bond, Latham L. Higgins, and Charles D. Arms?

A. All I sold was my interest to Luna.

Q. Which Luna?

A. Jose Maria Luna.

Q. Don't you know that those gentlemen paid one thousand dollars for the one-half interest of the heirs of Rafael Luna, of which you are one?

MR. REYNOLDS: I object to it as incompetent.

By the COURT: Admitted subject to the objection.

Q. You say you did not?

A. No, sir.

Q. How did you happen to be upon the grant at the time referred to?

A. I was rounding-up some cattle that I had at the ranch there about eight miles from Jinza. I had a ranch there for two 106 years.

Q. On the grant?

A. I don't know whether it is on or outside of the grant.

Q. How many miles west of the Arroyo Ariveche was the ranch?

A. Between six and eight miles, I think.

Q. Did you make a deed to Jesus Maria Luna and Tranquilina Luna of your interest in the Alamillo in December, 1883?

A. I think so.

Q. Did you ever see a map of the grant?

A. No, sir.

Q. Were you present when a survey of the grant was made?

A. No, sir.

Q. What made you have any doubt as to whether your ranch was on the grant or not?

A. I didn't know how the boundaries laid. I tried to be outside of the ranch, but, of course, didn't know for certain.

Q. When did your father, Rafael Luna, die?

A. I don't know.

Q. Did he die when you were so young that you can't remember?

A. I was about fifteen years.

Q. Did he die fifteen years ago?

A. I don't remember when he died.

Q. Where did he die?

A. At Lemitar.

107 Q. Who was present when you had this conversation with Anastacio Garcia?

A. Jose Labadie and another, I believe, an Englishman.

Q. Who first told you you were wanted as a witness in this case?

A. Nobody.

Q. Did you come up here with Mr. Brown, the surveyor?

A. I was summoned here?

Q. Did you come up here on the train with Mr. Brown, the surveyor?

A. Yes, sir.

Q. Where did you meet him?

A. We started this morning.

Q. Did you know you were going to meet him and come up here?

A. Not until I saw him at the train.

Q. Did he take charge of you coming up here?

A. No, sir.

Q. Did you or not pay your own fare?

A. Yes, sir.

Q. Did you or not have any conversation about this case on the train with Mr. Brown?

A. No, sir.

Q. Did you ever have any conversation with anybody about this case?

A. Not that I remember of.

Q. Did you ever tell anybody until you were sworn here 108 about the conversation with Anastacio Garcia?

A. I think I told Mr. Brown.

Q. Where?

A. In a store in Socorro.

Q. Did you tell him of your own motion?

A. Yes, sir.

Q. Just as you might have told anybody else?

A. Yes, sir.

Q. Didn't you know Mr. Brown had an interest in this property?

A. No, sir.

Q. It was a mere accident that you told him?

A. Yes, sir.

Q. He didn't make any inquiry?

A. No, sir.

Q. What month was it you told Mr. Brown?

A. About a month ago.

Q. At that time did you know that there was any litigation pending in this court about this grant?

A. No, sir.

Q. At that time did you know that Mr. Brown had been sworn as a witness in that litigation?

A. No, sir.

Q. Did you know he had been making inquiries about the boundaries of this grant?

109 A. No, sir.

Q. So far as you are able to state, then, Mr. Brown was a perfect stranger to those questions at the time you spoke to him?

A. Yes, sir; I knew him.

Q. What was your motive?

A. I don't know how it came up.

Q. Were the people talking about the grant at that time in that store?

A. No, sir.

Q. Then did you talk to Mr. Brown again about the case?

A. No, sir.

Q. Never said another word to him since?

A. No, sir.

Q. Is Mr. Brown the only person to whom you spoke from the time Anastacio Garcia spoke to you about this matter?

A. No, sir.

Q. You don't recollect anything about the survey of this grant?

A. No, sir.

Q. Do you recollect Judge Bond, Mr. Higgins, and Mr. Hays going over the grant?

A. No, sir.

Q. Have you ever been to the Ojo de la Jara, near La Jara peak?

A. No, sir.

110 Q. Describe to the court the spring you call Ariveche.

A. I can't describe it very well, as I just passed by.

Q. Give the court as much information as you can.

A. In the cañada the water runs right along the side—

Q. Where is the spring situated with reference to the bottom of the cañada?

A. It is pretty near the bottom.

Q. Do you swear it is near the bottom?

A. I do not know; I don't remember.

Q. Do you swear you think it is near the bottom? Is that what you think?

A. I think so; maybe it is at the top, on the hill. I haven't been there for a long time.

Q. You are not certain whether it is on the hill or on the bottom of the hill?

(No reply.)

Q. What made you think a little while ago it was on the bottom? Have you changed your mind?

A. No, sir.

Q. Do you now think it is on the hill?

A. I think it is on the bottom.

Q. Little while ago you thought it was—the hill. Do you think it was on the hill or on the bottom?

A. Near the bottom; it runs a little west from the cañada.

111 Q. How high up is the spring from the bottom of the cañada?

A. I don't know how high it is.

Q. Do you know that it is on the bottom of the cañada?

A. I think so.

Q. Do you know that it is above the cañada, on the hill?

A. No, sir.

Q. What is the name of the cañada in which you say the spring is?

A. Ariveche.

Q. Have you given the best description of that spring you say you can?

A. Yes, sir.

Q. How large a spring is that?

A. It was just a small spring when I saw it. I just crossed there; I didn't stop.

Q. State the whole conversation you and Anastacio Garcia had on that day.

A. We were talking there about the grant, and he said that was the west boundary of the Alamillo from the Cañada Ariveche.

Q. Cañada Ariveche?

A. Spring of Ariveche.

Q. Did you not say cañada?

A. It was the spring that runs in the Cañada Ariveche.

Q. Why did you say the boundary was the Cañada Ariveche?

A. The spring, I meant—

112 Q. Why did you say it?

(No reply.)

Q. Slip of the tongue, was it?

A. Yes, sir.

Q. How did this conversation commence?

A. I don't remember.

Q. How did he commence to talk about the boundary?

A. We were just speaking about the grant and that's how it came up.

Q. Did he mention any of the others?

A. No, sir; that's all; just a few words.

Q. What was the occasion of your being there?

A. He was branding cattle.

Q. What were you doing?

A. Rounding up cattle.

Q. Were you helping him?

A. No, sir; I was after my own.

Q. Were you an intimate friend of his?

A. Yes, sir.

Q. How old was he at that time?

A. I don't know; sixty years old, I guess.

Q. How old were you at that time?

A. I was then about twenty-seven years old.

113 Re-examination by Mr. REYNOLDS:

Q. You know there was a spring of water there, whether on the bottom or top?

A. I saw water running.

Mr. KNAEBEL: I object, because it is not proper redirect.

By the COURT: Admitted subject to the objection.

Witness excused.

ETHAN W. EATON, sworn, testified on behalf of the United States, in English, as follows:

Examination by Mr. REYNOLDS:

Q. What is your name, age, and residence?

A. Ethan W. Eaton is my name; age, sixty-six; residence, Socorro.

Q. How long have you lived in this Territory?

A. Since the year '49.

Q. Do you know where the Antonio Chaves land grant is situated, in a general way?

A. Yes, sir; I do.

Q. Did you know Anastacio Garcia in his lifetime?

A. I did.

Q. I will get you to state in your own way what, if any, conversation you ever had with him with reference to the Antonio Chaves land grant, its boundaries, and so forth.

114 Q. (continued). And the survey made by the United States and the claim made by the parties under the survey made by the surveyor?

Mr. KNAEBEL: I object to the question as incompetent, irrelevant, and hearsay, and no proper foundation has been laid.

A. Somewhere about the time the grant was sold or bargained for—various parties there was a great deal of conversation and talk passed between Mr. Garcia and myself and others; and as to the boundaries, I can't say further than Mr. Garcia stated, on various occasions, that they were attempting to survey more land than they had sold, and it being a matter that did not directly interest me, I didn't inquire; but that was the general impression of the conversation between Mr. Garcia and others—not directly to me. We were there at the store, which is a general stopping place for those going to Magdalena City, and the conversation came up at several times, and that was the substance of Mr. Garcia's remarks in relation to the grant.

Q. Was there anything said, Colonel, as to the points to which survey was being made by name?

A. I remember one point because it has been mentioned frequently since.

Q. What was said about it?

A. My recollection is that the Ojo de la Jara that they claimed was not the Ojo de la Jara that was intended in the grant.

115 Q. Do you know whether Anastacio Garcia is dead?

A. He is dead. I didn't see him die, nor after he was dead, for that matter, but it was so rumored.

No cross-examination.

LUCIANO CHAVES sworn, testified on behalf of the United States, in Spanish, as follows:

Examination by Mr. REYNOLDS:

Q. Give the stenographer your full name, age, and residence.

A. My name is Luciano Chaves; I am forty-nine years old; my residence, Polvadera, in the county of Socorro.

Q. Did you know Anastacio Garcia in his lifetime?

A. Yes, sir.

Q. Do you know Martin B. Hays?

A. I don't know now whether I should know him if I should see him.

Q. Do you know a man by the name of Hays, who pretends to own the Antonio Chaves grant?

A. I knew him about seventeen or eighteen years ago.

Q. Where did you first see him?

A. In my own house.

Q. What was he doing there?

A. Anastacio Garcia and himself came to my house with two witnesses, who they asked me to swear with reference to some statements relative to the line of Pablo Garcia ranch; they were Pablo Chaves and Antonio Garcia. I do not remember the rest.

Q. What was your official position at that time, if any?

A. I was justice of the peace.

Q. Did you examine any witnesses at that time?

A. Yes, sir.

Q. What witnesses?

A. Rumaldo Chaves and Francisco Chaves y Marquez.

Q. Did you hear any conversation between Rumaldo Chaves and Anastacio Garcia at that time about the western boundary of this grant?

Mr. KNAEBEL: I object to the question as incompetent and hearsay.

Q. (continued). Any statements made by Rumaldo Chaves about it?

Mr. KNAEBEL: Same objection.

By the COURT: Testimony may all go in subject to objections.

A. Yes, sir.

Q. What was it?

A. After he had stated under oath what the Pablo Garcia ranch was, they went away to take their dinner, about a mile from the place. When Mr. Garcia and Mr. Hays came back, then the con-

versation took place between Rumaldo Chaves, myself, and others.

The substance of the conversation was that Rumaldo Chaves
117 stated, My father told me that about 1828 or 1830 that the grant of Antonio Chaves was made; that the grant was from the spring that we at this day call Ariveche, and from that place east to the river; and then Rumaldo Chaves asked him how it is that they state beyond this plain is the La Jara; and then the father of Rumaldo Chaves said, they want to steal this, and rob this, and they were at the Ariveche, and his father said, that this place that we are now is the Ojo de la Jara, it has been known by that name from all time till Ariveche was killed; before that time it was known as the Ojo de la Jara; at this time Don Anastacio Garcia came into the room where we were and heard the conversation, and said to Don Rumaldo Chaves, Shut up your mouth, and Mr. Chaves did so.

Q. Do you know whether Mr. Hays was present or not?

A. I cannot state that; I cannot state whether he was in the room or not, but it is certain he was either inside or outside somewhere.

Q. What time did he leave there that afternoon?

A. As far as I can remember, it was about one or two o'clock.

Q. Who did he leave with?

A. Don Anastacio Garcia and one other gentleman, Francisco Chaves y Marquez, Rumaldo Chaves, and myself.

Q. What was done after you left there all together?

A. Francisco Chaves y Marquez and Rumaldo Chaves went
118 to show where the ranch of said Pablo was situated.

Q. He wants to know if you want him to state what Rumaldo Chaves said on direct examination.

Q. I want to know what the parties did after they left there.

A. They went there and showed where the ranch of Pablo Garcia was situated.

Cross-examination by Mr. KNAEBEL:

Q. How old was Rumaldo Chaves at the time you had this conversation?

A. I cannot state exactly, but I can state more or less how old he was.

Q. State it.

A. He was about sixty-five or seventy.

Q. How old was the other man—Francisco Chaves y Marquez?

A. He was probably four or five years younger than the other fellow.

Q. Did this conversation occur in October, 1877?

A. I don't know when it was exactly, but it was about seventeen or eighteen years ago.

Q. Describe how you took those sworn declarations.

A. I remember some of them only; I cannot say all.

Q. Did you have printed paper there with questions upon it?

A. No, sir; I had nothing.

Q. What record did you make of the depositions taken?

119 A. I only recorded in the book of the precinct the answers that the gentlemen made in reference to the ranch of Pablo Garcia.

Q. Look at papers now shown you—

A. There was another gentlemen who took statements on that occasion also.

Mr. KNAEBEL: I move to strike that out as not responsive to the question.

Mr. REYNOLDS: I object, and insist that it stay in the record. Witness has a right to make such a statement for his own self-protection.

By the COURT: Admitted subject to motion and objection.

Q. Look at papers—now shown witness—and state whether you recognize those as the papers taken out and executed at the time of the taking of the depositions of Rumaldo Chaves and Francisco Chaves y Marquez.

A. I think they are; that is my handwriting.

Said papers identified as Exhibits "A 1" and "A 2," respectively, for plaintiff.

Witness excused.

Mr. REYNOLDS: I offer now—I offered at the last term of the court part of the files in this case; I now offer all of the files in the case heretofore instituted before the surveyor general under the act of July 22, 1854.

120 Mr. KNAEBEL: I ask that they be admitted subject to any specific objection I may desire to make as to competency, etc.

Mr. REYNOLDS: Under strict rules, possibly none of them are competent, but I introduce them for what they are worth, having in mind the expressions of the Supreme Court in the California cases.

By the COURT: They may go in.

Defendant rests.

Plaintiff on Rebuttal.

Mr. KNAEBEL: I offer exhibits heretofore identified as "A 1" and "A 2," and will read them to the court.

(The said exhibits are annexed as Plaintiff's Ex. No. 3 and Plaintiff's Ex. No. 4.)

PABLO PADILLA, sworn, testified as a witness on behalf of the plaintiff, in Spanish, as follows:

Q. State your name, age, residence, and occupation.

A. Pablo Padilla is my name; I live at Polvadera, county of Socorro; fifty-seven years old, and a farmer.

Q. Where is Polvadera?

A. Ten miles above Socorro, on the north.

Q. How far is it from the Antonio Chaves grant?

A. About two or three miles.

Q. How long have you lived at Polvadera?

A. I have lived there all my lifetime.

121 Q. And during all that time have you known the Antonio Chaves grant?

A. I have known it since I can remember; the grant of Alamillo and the land of Antonio Chaves is what I know.

Q. Do you know the common repute in that vicinity from the time that you can first recollect as to the extent of that grant towards the west?

A. To the La Jara spring.

Q. Do you know the Ojo de La Jara, which is the western boundary of the grant?

A. Yes, sir.

Q. Have you seen it often?

A. Yes, sir.

Q. In which direction is that Ojo de la Jara situated from the Bear mountain?

A. It lies to the west.

Q. Do you know the Arroyo de la Jara, near which that spring is situated?

A. Yes, sir.

Q. Describe to the court the kind of vegetable growth about the Ojo de la Jara when you first knew it—the amount of its bushes.

A. There are some rushes and willows.

Q. Describe the willows as to their size.

122 A. In the year 1862, the first time that I knew this place, the growth of willows and rushes was very luxuriant and the growth was on both sides.

Q. Were there many willows on both sides?

A. Yes, sir; there were.

Q. Did you know Annastacio Garcia?

A. Yes, sir; I knew him well.

Q. Do you know the land claimed and occupied within the Antonio Chaves grant?

A. Yes, sir; I have not seen it personally, but I have known that they claimed as far as La Jara.

Q. When you say that you have not seen it personally you mean that you have not seen the grant paper personally—

A. That is what I mean.

Q. —but you saw the land?

A. Yes, sir; I saw the land since 1862.

Q. Did you ever hear of a man named Ariveche?

A. Yes, sir.

Q. Was he Mexican or Apache?

A. I did not know him personally; I only knew his name.

Q. When did you first hear his name?

A. In the year '58 we were camping at the Ojo de la Jinza, and while at that place I went about a mile further north, and my

father told me that the Cañada Ariveche was the place that they killed that man.

123 Q. Was the cañada a little spring?

A. I did not know any spring then, but I know it now.

Q. Do you know a cañada called the Cañada Ariveche?

A. Yes, sir; my father told me so.

Q. In all your lifetime, from your boyhood until within a few months, did you ever hear of any spring in the Cañada de Ariveche called or referred to as the La Jara?

A. No, sir; except in that short time stated to this time.

Q. Do you know a little spring that some people now call the Ariveche spring?

A. I do not know it, neither before nor now.

Q. Are there any willows growing, or have you ever known any willows to grow in the Cañada de Araveche?

A. I say that I don't know, and I have not known it before.

Q. What kind of trees and bushes do grow in the Cañada Aravache?

A. There is a good deal of wood at the place where I know the Cañada Araveche, but not all.

Q. Any particular kind of wood?

A. Palo blanco—at the place where I know the cañada down below there are no palo blanco; there is sabinal.

Q. Do you or don't you know a little spring—where it is—that is called Araveche?

A. No, sir; I do not know it.

Q. Were you called upon to fight Indians when they were at war in that country?

124 A. Many times. I fought against them for three years.

Q. Were Pablo Sanchez and N. Aragon with you in those campaigns?

A. They were with me sometimes and sometimes they were not.

Q. Do you know Jose Antonio Baca y Pino?

A. Yes, sir.

Q. Was he ever present in any campaign in which you fought?

A. Not in my time. He was very old already.

Cross-examination by Mr. REYNOLDS:

Q. You say you know where the Ojo de la Jara is?

A. Yes, sir.

Q. You first knew it when the survey was made—about 1873—didn't you?

A. In the year '62.

Q. It is over in the Navajo country, isn't it?

A. Yes; it is west from the place where I now live.

Q. Isn't it in the Navajo country?

A. It is in that country.

Q. Is the Navajo country west of the Bear mountains?

A. To the west and north.

Q. Were you ever west of the Bear mountains until within the last few years?

A. Yes, sir; I went as far as the Camino Monte.

Q. Where is that?

A. On the north and west.

125 Q. Do you know where the town of Santa Rita is?

A. Yes, sir.

Q. Do you know where the Rio Salado is?

A. Probably it is the Rio Agua Salado.

Q. Where is it?

A. That place lies on the west of the Rio Grande; it empties into the Rio Grande.

Q. Do you know what that Arroyo Ariveche was known by before that man was killed there?

A. No, sir; I knew it by the name of Cañada Ariveche since the year '58. I don't know what it was before.

Q. You know it got its name from the man who was killed there by the Indians?

A. That is what my father stated to me when I was herding the sheep.

Q. And you don't know what it was known by before that man was killed there?

A. No, sir.

Q. Did you ever go around and over that cañada?

A. I did not go over the whole cañada. I was herding sheep there and my father stated to me that they called the place Cañada Ariveche, but I did not know the place as far as the spring.

Q. Then you never went to the spring?

A. No, sir; and I don't even know it now.

126 Q. How long since you went there?

A. '58. I have been several times there, but that is the first.

Q. When were you last there?

A. I have been there several times, and I have been there frequently after the Indians, and every time I go to Santa Rita I see the place.

Q. Do you know how long the cañada is?

A. I have not seen its length, because it lies from west to east.

Q. So when you were there you only saw a part of it?

A. Yes; the lower part of it.

Q. When was the first time you knew the La Jara spring?

A. In 1862.

Q. How did you happen to know it then?

A. At that time they killed a common herder at Polvareda, and we went out in pursuit of the Indians as far as the Cañada Mosa, and a company of settlers came up with us, and from that place we turned back because the Indians had destroyed our camp, and the soldiers had already started before us to go back, and we started back, and a person by the name of Pedro Garcia told us that that place was the Ojo de la Jara, and that's how I knew the spring. There were only about eleven persons in the party left.

Q. And that's the first time you ever knew of the La Jara spring?

A. Yes.

127 Q. That country was full of Indians, wasn't it, when you were a boy?

A. They were living far, but almost every night they were wont to steal out cattle, and we would go out in pursuit of them.

Q. Were not you compelled to stay near the river on account of the Indians?

A. We always lived at the river together, in order that we would go together, at Rito, and in going out in pursuit of the Indians with the justice of the peace and with the sheriff, and sometimes we would go in our own interest and sometime in the interest of others.

Q. Were there not settlements on the Arroyo Ariveche and Arroyo San Lorenzo?

A. No settlements and no ranches at that time.

Q. Do you know or remember when the first survey was made of that grant?

A. I do not know anything.

Redirect examination.

By Mr. KNAEBEL:

Q. Do you know the Ojo del Navajo spring?

A. I do not know where that place is.

Q. Some miles north of the Ojo de la Jara spring was a Navajo camp—

Mr. REYNOLDS: Objected to as leading and incompetent.

Mr. KNAEBEL: Very well. Counsel for plaintiff will substitute the map introduced by the Government and excuse the witness from further testifying on that point.

Witness excused.

NEPOMOCENO ARAGON, sworn as a witness on behalf of plaintiff, testified, in Spanish, as follows:

Examination by Mr. KNAEBEL:

Q. What is your name, age, residence, and occupation?

A. Nepomoceno Aragon; I live at Polvareda; my occupation is farmer; I do not know how old I am.

Q. What relation are you to the witness Don Luciano Chaves?

A. He is my nephew.

Q. How long have you lived at Polvareda?

A. I have lived there since the year '57.

Q. From what place did you move into Polvareda?

A. I moved from Cebolleta.

Q. What county?

A. Valencia.

Q. Do you know the Antonio Chaves or Alamillo grant?

A. I knew it.

Q. In what direction is Cebolleta, where you lived in your younger days, from the Antonio Chaves grant?

A. It is to the north.

Q. Did you know Anastacio Garcia in his lifetime?

A. Yes, sir.

129 Q. Do you know what was reputed in the neighborhood of that grant to be its western boundary?

A. I know it from what was stated, but not from having been there at any time.

Q. You know what the common speech of the people was on that subject in the neighborhood?

A. I do.

Q. From what limit was it reputed?

A. They said that it was to the La Jara spring, which is referred to.

Q. How long have you known that spring?

A. I knew it in the year 1862; it is northwest from the Bear mountains.

Q. Do you know the Arroyo la Jara, west of the spring?

A. Yes, sir.

Q. State whether or not there are many willows growing at the La Jara you refer to?

A. When I first knew the spring, there were a great many willows growing there—there were many.

Q. Describe how many, the extent of ground covered, and the kind of willows. Were they large willows or small?

A. I do not know exactly how many there were; they were large and small.

Q. Do you know the Arroyo Ariveche?

A. Yes, sir.

130 Q. Do you know the spring in the arroyo that is today called the Ariveche spring?

A. Yes, sir.

Q. Is that spring situated on the bottom of the arroyo or on the upper side?

A. Formerly it was above the arroyo, but now it is at the bottom of the arroyo.

Q. Describe that spring.

A. When I first knew it — was a small spring there, in the arroyo; the arroyo was formed afterwards by the flows.

Q. What do you mean by the arroyo?

A. The small arroyo coming into the cañada, and at its head the arroyo takes the form of the flows, and at the lower part the arroyo spreads.

Q. When you first knew the spring what was its appearance?

A. It was a small spring.

Q. Have you ever known that spring to be called by any name except Ariveche?

A. No, sir.

Q. What was the name of the cañada?

A. Cañada Ariveche.

Q. Do you know why it was called Cañada Ariveche?

A. I have heard it stated that a man by the name of Ariveche herded sheep there.

131 Q. Was it the spring or the cañada that was called Araveche?

A. The cañada.

Q. Do you know a tree or bush called by the name of palo blanco?

A. Yes, sir.

Q. Are there any of those bushes growing near the spring called Ariveche?

A. Yes, sir.

Q. Are there any willows growing there?

A. No, sir; I have not seen any.

Q. And you have known that spring in the Cañada Araveche since 1857, have you?

A. I knew it in '57 or '58, because probably he did not go there same year when I knew it.

Q. Were there any willows growing there at that time?

A. There were none.

Q. Did you ever see any there in your lifetime?

A. No.

Q. You are well acquainted with the Cañada Araveche?

A. I know it from the spring to its mouth.

Q. How long is the Cañada Araveche?

A. That, after the place where the Cañada Salado, as it is called, empties into this Araveche, it may be four miles.

Q. How far west does this cañada run from where the little spring is?

132 A. It does not run to the west, it is plain.

Q. Well, in what direction does the cañada run?

A. It runs to the east.

Q. Did you also go on Indian campaigns in that country?

A. I did.

Q. Did you go out with witness Pablo Padilla?

A. Yes, sir.

Q. Pablo Sanchez also?

A. Yes, sir.

Q. Jose Pablo Pino ever go out with you?

A. No, sir.

Q. Explain what was the flow or capacity of that spring when you first knew it—the spring in the Cañada Araveche; run water enough for drinking purposes?

A. The quantity of water was very small; to get a drink had to dig with a stick.

Cross-examination by Mr. REYNOLDS:

Q. You said you know the Ojo de la Jara, west of the Bear mountains, since 1862; for the first time?

A. Yes, sir.

Q. The way you happened to go to it you were out there after Indians, were you not?

A. Yes, sir.

Q. Way over in the Navajo country there?

133 A. Yes, sir.

Q. Do you know how the Cañada Araveche got its name?

A. Yes; I know it.

Q. How?

A. Because a man by the name of Araveche herded sheep there.

Q. Was there any other water in that country except in that cañada?

A. There is none.

Q. Did you ever herd sheep there too?

A. No, sir.

Q. Do you know where La Jinza is?

A. Yes, sir.

Q. Was that ever known by any other name?

A. No, sir.

Q. Did you ever hear people in that country say that Araveche was known by any other name prior to that man being killed?

A. I do not know.

Q. Do you know whether the cañada ever had any other name or not?

A. I do not know.

Q. You never heard anybody say that it had a name prior to that man being killed there?

A. I have never heard.

134 Q. How long since you have been to the Araveche spring?

A. I think I was there about year before last.

Q. What is the condition of it with reference to growth of bushes around it?

A. There are none.

Q. Are there any willows there now?

A. None.

Q. When were you at the Ojo, west of the Bear mountains, last?

A. I was there about four years ago.

Q. What were you doing there?

A. Herding there. Man lives there, and I went there with his flocks.

Q. Do you remember when this grant was surveyed?

A. I do not remember.

Q. There are no growth of bushes around the Araveche spring and no willow trees, are there?

A. There are a certain class of trees called palo blancho near it.

Q. How many?

A. There are some of them—I did not count them. There are some clusters.

Q. You say you were there how long ago?

A. Year before last.

Q. At the time you were there, all around the spring isn't there

135 a close growth of brush at the mouth and extending all around for over an acre?

A. I did not see it.

Q. Were there ever any willows around that Araveche spring, thick growth of them, five years ago—growth of willows around the spring and brush on the outside of them?

A. No; at the Ojo de la Jara, there is only palo blanco at that place; there is no cedar growth.

Q. When was the first time you saw the place at Araveche?

A. In '56 or '57.

Q. Did you find anything there then?

A. I found water.

Q. Did you find any brush?

A. No.

Q. It was barren then?

A. I did not see any of those at any time. There was palo blanco.

Q. Do you know Jose Antonio Baca y Pino?

A. Yes, sir.

Q. How long have you known him?

A. From the time I came to the place, about '56 or '57.

Q. Did you ever go with him on any Indian expeditions out as far as the Araveche spring?

A. No, sir.

Q. Do you know whether he ever went out on expeditions or not?

A. I did not see him.

136 Q. He was a prominent man in the community, was he not?

A. He was.

Q. An officer, wasn't he?

A. They said so.

Q. Did you ever know Cayetano Tafoya?

A. Yes, sir.

Q. How long have you known him?

A. From the time I have been living at Polvareda.

Q. Did you ever go on expeditions with him?

A. Yes, sir.

Q. Did you go out as far as the Araveche with him?

A. I did not go to that place, but I went out with him.

Q. Did you ever go with him over to the Ojo de la Jara, over the Bear mountains?

A. I do not think so.

Q. Is that spring of Araveche down at the bottom of the cañada or up on the edge of it?

A. It is at the bottom of the arroyo.

Redirect examination by Mr. KNAEBEL:

Q. Does the water of that spring trickle down the sides of the arroyo to the bottom?

A. No; it is at the bottom now. There is a small hole there.

Q. Made by man?

A. Yes; an American man was fixing it.

137 Q. When you first knew it, was there any hole there or was it a little spring trickling down?

A. There was no hole then. Yes; it fell down.

Q. You were asked about the Navajo country. Do you know any Navajo spring northwest of the Ojo de la Jara?

A. I know several springs.

Q. Do you know of any Navajo camp-ground northwest of the Ojo de la Jara?

A. Yes; they are living there now.

Q. Did the Navajos get in by way of the Ojo de la Jara to make invasions?

A. They would go out that way, but I don't know the way they would come in.

Q. You spoke of the reputation of Jose Antonio Baca. Do you know anything about the reputation of Cayetano Tafoya in the community in which he lives?

A. I know him to be a man who has been living there all the time I have been there.

Q. Before the hole was made in the Cañada Araveche, what was the quantity of water that trickled down at that spring?

A. A very small quantity of it.

Q. Was it of any use for watering cattle and sheep in its natural condition?

A. No, sir.

Recross-examination by Mr. REYNOLDS:

138 Q. You say the Navajo camp was at the Navajo spring? Were there any Indians camped there then that are camping there now?

A. It is probably at the Ojo Alonzo. I do not know what the Navajo spring is.

Witness excused.

PABLO SANCHEZ, sworn as a witness, testified on behalf of the plaintiff, in Spanish, as follows:

Direct examination by Mr. KNAEBEL:

Q. State your name, age, residence, and occupation.

A. My name is Pablo Sanchez. I live at Polvareda. I am fifty-five years old, and am a farmer.

Q. How long have you lived at Polvareda?

A. I have lived there since the year '51.

Q. Do you know the Antonio Chaves grant, commonly called the Alamillo grant?

A. I know the land.

Q. You know the land, you don't know the papers?

A. Sometimes I have seen the map. I have seen it probably three times.

Q. Do you know the land and claim of Anastacio Garcia as the Antonio Chaves grant?

A. Yes, sir.

Q. Do you know what the western limit of the Antonio Chaves grant was reputed to be, according to the common repute of the people in that community?

139 A. I do.

Q. What was that?

A. It was from the Ojo de la Jara in the direction to the Pueblo spring.

Q. Did you know Anastacio Garcia?

A. Yes, sir.

Q. Do you know that he pastured live stock on this grant?

A. I do.

Q. Do you know what he claimed as the western limit?

A. Yes, sir.

Q. What?

A. I don't know exactly; the tract of Alamillo, as it was called.

Q. How often have you been at the La Jara spring, at the western limit of the Antonio Chaves grant?

A. I have been there very many times; I don't know the number of times.

Q. Where is that spring situated with reference to the Bear mountains?

A. It is to the north, where the Cerro del Oso begins.

Q. Do you know the La Jara arroyo, west of the Ojo?

A. Yes, sir.

Q. Do you know the cerro or mountain of La Jara?

A. Yes, sir.

Q. State what kind of vegetation was growing at the Ojo de la Jara springs at the time you first saw that spring.

A. There were some willows, and there were some oak trees, 140 some cedar trees, and there was a wood there—a grove.

Q. State whether or not there were many willows?

A. There were many.

Q. How large were they when you first saw the spring?

A. At that time, when I first knew it, there were large willows there, very thick, and there were some small ones on the arroyo.

Q. How thick were some of the willows?

A. They were thick also, and they were high, and there were also some palo blanco in the cañada.

Q. Were they as thick as your waist?

A. They were this size (indicating with hands about 8 to 10 inches apart).

Q. When did you see the La Jara spring the last time?

A. A year, more or less.

Q. Are there as many willows there now as when you first knew the spring?

A. No.

Q. What has become of the willows?

A. Stock and cattle have destroyed them.

Q. Do you know the Cañada Araveche?

A. Yes, sir.

Q. Do you know the little spring in that cañada that some people call the Ojo del Araveche?

A. Yes, sir.

141 Q. When did you first hear of the Cañada Araveche?

A. I knew it about the year '54 or '55; since that time I have known it.

Q. At that time did that little spring have any name?

A. No; only the cañada was named Araveche.

Q. Describe that spring as it appeared when you first knew it in '54 or '55.

A. It is a cañada, coming down from the plain, that is called zore plain or prairie. The sides of the cañada come down to the bluff, where there are some small growths of oak trees, and on the side of that bluff of oak trees is a small hill, and the spring was at the top of this hill.

Q. Describe the quantity of water in the spring at that time.

A. The quantity of water was very small. The spring was situated on the side of the hill, about thirty feet from the bottom of the arroyo, and at the place where it was situated there was a cave, and the amount of water that rushed from it was very small—only enough to soak the ground.

Q. Was there water enough there to keep one's burro from starving?

A. Yes; at times—sometimes—because there was a tank.

Q. Describe the kind of vegetable growth in that cañada and in the vicinity of that spring from the time you first knew it.

A. There are some trees—palo blanco—right near the spring and some brush called *called* lemito, and there were some cedar trees.

142 Q. Were there any willows there at all?

A. No, sir.

Q. Have you ever seen any willows growing there?

A. No, sir; there was a very pretty growth of palo blanco and lemito.

Q. And were they tall trees?

A. This tree that we call palo blanco—there are large quantities of it.

Q. State what, if any, occasion you have had to do any work out and around this spring of Araveche.

A. Yes; I worked there for a short time.

Q. Were you never in occupation of it?

A. I do not remember whether it was in 1886 or '87.

Q. Well, did you sell your crops and possession of that spring to anybody?

A. Yes.

Q. To whom and when?

A. I sold it to a man named Tinqueley

Q. In what year?

A. In the same year. I was only there seven or eight months when I sold it.

Q. Did you live at that spring seven or eight months?

A. Yes; I was there with some cattle that I had.

Q. Did you improve that spring—make any hole for the water?

A. Yes, sir.

143 Q. Did you see the spring quite frequently?

A. Yes, sir. (And he says:) There was a great flood in the year 1883 that dug the arroyo out, and afterwards the spring gushed forth in the arroyo where I now say.

Q. The same place?

A. No; below.

Q. How long did you occupy this spring?

A. 8 months, more or less.

Q. Did you see the spring for about eight months, more or less, every day?

A. Yes, sir.

Q. Did you live there?

A. Yes; I lived there at times.

Q. And you were well acquainted with the spring and the country about it?

A. Yes, sir.

Q. And you are positive there were no willows there at all?

A. There were none.

Q. Did you ever hear, during all the time you have lived in the county of Socorro, that this spring in the Cañada Araveche had been called La Jara?

MR. REYNOLDS: I object to the form of the question.

MR. KNAEBEL: Question withdrawn.

Q. Do you know Jose Antonio Baca y Pino?

A. I do.

144 Q. Do you know Cayetano Tafoya?

A. Yes, sir.

Q. Last spring did you have any conversation with Jose Antonio Baca y Pino and Cayetano Tafoya about the name of that spring?

A. Yes, sir.

Q. Before that conversation by what name had you known the Cañada Araveche?

A. Cañada Araveche.

Q. Before that conversation did the cañada or the spring in it have any other name, to your knowledge?

A. No—at least, I did not hear it.

Q. In that conversation that you had last spring did you hear any other name mentioned in respect to that spring in the Arroyo Araveche—in the conversation between you and Mr. Baca?

A. No; the conversation with Jose Antonio Baca, who was going down with Mr. Brown; he asked me about whether I knew where the Ojo de la Cobre was. I said, No, and then Mr. Baca asked me again, "Why, don't you know the Ojo de la Cobre?" And I thought to myself—a son of Mr. Baca's, who was standing by, and

said, "Why, don't you know it? It is over near your place." And then I said, Probably you have reference to the Cañoncito de la Cobre; that is about a mile and a half from Polvareda. That is all the conversation I had with Mr. Baca—Juan Antonio.

Q. What is the name of that son of Jose Antonio Baca?

A. I do not know; I know him well by sight, but I don't know his name.

145 Q. Does he run sheep on the Antonio Chaves grant?

A. I do not know how it came about that he happened to be there. Mr. Baca and this gentleman (indicating Mr. Brown, sitting near) were coming in a buggy, and they met at the place.

Q. In that conversation was any allusion made to the Araveche spring?

A. No.

Q. When was that conversation?

A. I do not remember the month, but it was in the summer time; I don't know; in May, June, or July.

Q. Did you have any conversation with Cayetano Tafoya about that Cañada Araveche?

A. Yes, sir.

Q. What was it?

A. When we were summoned here to Santa Fé I was coming down and we met, and he asked me if I knew a place that is called Araveche spring, and I said, No; and he stated to me that the place that we now call Araveche was formerly called Ojo de la Jara, and then I said to him, I have not known it by that name since I have been acquainted with the spring, until you have said so. That was the conversation that we had together, and then we came away.

Q. Was anything said by him as to testifying—as to your testifying?

A. No; that was the only thing that happened at that place while we stayed there.

146 Q. How many times had he asked you if it had not been called La Jara before?

A. It was probably two or three times. He stated to me that they always called it before by the name of La Jara spring.

Q. Did he say anything at that time about lying?

A. No; he did not state to me that I was lying or that he was going to lie, but it seemed so strange that I had not known this before.

Q. He asked you three times about it?

A. About two or three times.

Q. Did he ask you if you had known it by any other name?

A. Yes; he was the one who asked me the question first.

Cross-examination by MR. REYNOLDS:

Q. Didn't Mr. Brown ask you the question first?

A. He first. Mr. Brown and Jose Antonio Baca asked me about the Ojo de la Cobre.

Q. Didn't Mr. Brown ask you if you hadn't known the Ojo de la

Araveche, the spring in the Cañada Araveche, by the name of the La Jara?

A. No, sir; he did not.

Q. Didn't stop you and tell you they were out there for that purpose, when Mr. Baca was in the buggy with him?

A. Yes: about the Cobre spring.

Q. Didn't ask you at the time you met him, when he had Mr. Baca in the buggy with him, if you had known the Araveche 147 spring in the early days as La Jara?

A. No.

Q. He never did ask you, did he?

A. No, if he asked me I did not hear. I heard about the Ojo la Cobre.

Q. Where is your ranch?

A. I have no ranch there any more.

Q. Where is your ranch now?

A. I have a ranch at Santa Rita now.

Q. Where do you live?

A. I live at Polvareda.

Q. When you were down at Araveche and had your sheep ranch there, you didn't ask permission of anybody, did you?

A. No.

Q. You knew you weren't on anybody's ground?

Mr. KNAEBEL: Objected to as incompetent; not proper cross-examination.

By the COURT: Admitted subject to the objection.

A. I knew it then, because there were some rumors started, that land was Government land.

Q. Do you know where the Bear springs are?

A. Yes, sir.

Q. What direction are they from Santa Rita?

A. Southwest.

Q. You say that Cayetano Tafoya asked you four or five 148 times if you hadn't known the Araveche spring by the name of La Jara?

Mr. KNAEBEL: Object to the question as misleading.

No ruling.

A. Yes; he asked me that.

Q. He asked you four or five times, didn't he?

A. About three or two times.

Q. Or five?

A. The fact is, that it was about three times.

Q. You thought it was very strange that he should ask you three times, didn't you?

A. Yes, sir; because I never heard it called by that name.

Q. He didn't offer you anything to admit it, did he?

A. No, sir.

Q. Didn't get mad at you, did he?

A. No, sir.

Q. Didn't seem very much hurt about it, did he?

A. No, sir; but I thought in my mind it was strange.

Q. When was the first time that you knew the spring called the Ojo de la Jara?

A. In '57 or '58.

Q. When was the first time you knew this Ojo de la Jara to be the boundary of a grant?

A. From the year '51 to '52. I heard it mentioned about the year '51; I knew it from the grant at the beginning of '52, the place as it is called, Alamillo.

Q. Where is this place Alamillo?

149 A. It is above Polvareda, where the Alamillo is situated, as belonging to Antonio Chaves and also Anastacio Garcia, and one by the name of Vicente Chaves.

Q. Do you know where the Pueblo springs are?

A. There are several Pueblos.

Q. The Pueblo springs.

A. I do not know which Pueblo; I do not know which springs.

Q. The Pueblo springs that you mentioned in your examination-in-chief?

A. The Ojo de la Pueblo is situated near the south end of the mesa, as they call it.

Q. Well, it lies south of Santa Rita, as they call it?

A. Yes, sir.

Witness excused.

JESUS BACA, sworn as a witness on behalf of plaintiff, testified, in Spanish, as follows:

Examination by Mr. KNAEBEL:

Q. What is your name?

A. Jesus Baca.

Q. Where do you live?

A. I live at Sabinal.

Q. How old are you?

A. I will be seventy-five years on the fifth of January next.

Q. Did you know Antonio Chaves, grantee of the Alamillo grant?

A. Yes; he was my master.

150 Q. Is Antonio Chaves dead or alive?

A. He is dead.

Q. What was the name of his wife?

A. Monica Pino.

Q. Where did Antonio Chaves live?

A. At Belen. At the place that is called Las Trampas.

Q. Was Antonio Chaves a poor man or a rich man?

A. He was a very rich man.

Q. What class of live stock did he possess when you were a boy?

A. He had sheep, cattle, horses, and hogs.

Q. How many hogs did he have?

A. At the time when I went to work for him he had sixteen.

Q. How many mares did he have?

A. He had forty unbroken mares they brought in from Sonora, besides his sheep-horses.

Q. How many cattle did he have?

A. One thousand.

Q. How many sheep did he have?

A. Three thousand.

Q. Was he a man of good reputation in that community?

A. Yes, sir.

Q. Who was chief herdsman—caporal—of the sheep of Antonio Chaves?

A. I took care of his sheep for one year; I was chief herder for him for seven years; I was caporal.

151 Q. How many men did he employ to take care of his sheep and his cattle?

A. Seven, with myself, for the sheep and seven for the cattle—fourteen in all.

Q. Were these men furnished with arms or not—these men who were in charge of his live stock?

A. They were armed, because the Navajos were making a great deal of harm.

Q. How many years were you in the employ of Antonio Chaves?

A. Eight years and nine months.

Q. During the time you were caporal or chief herdsman, how far west did you take his flocks to herd and water them?

A. I brought them over several places, and then when I became caporal he showed me the boundaries of the ranch of Alamillo, for which he said he had a grant from the Government.

Q. Did he show you the Ojo de la Jara?

Mr. REYNOLDS: I object.

Q. Where is the Ojo de la Jara that you have referred to with reference to the Bear mountains?

A. It is on the north of the Cerro del Oso. I know all the boundaries of the land from this man.

Q. Where is the Arroyo de la Jara?

A. The arroyo and spring are about two miles and a half from Santa Rita, from the north to the west from Santa Rita.

152 Q. What kind of vegetable growth was about the Ojo de la Jara when you first knew that spring?

A. When I knew it the first time I saw a great deal of willow there—very thick willows—and some rushes.

Q. State whether or not the willows grew in great quantity.

Q. There were a great many of them.

Q. Over what extent of country did the willows grow around that spring?

A. About three or four hundred yards.

Q. How high were those willows?

A. The willows were about three yards high, more or less.

Q. Do you know a cañada called today the Cañada Araveche?

A. Yes; for twenty years passed I have known the Cañada Araveche, so called for a man by that name who was killed there.

Q. About how long ago was that man Araveche killed in that cañada?

A. About twenty-two years ago.

Q. Was he a Mexican or an Apache?

A. He was an Apache.

Q. Before the death of that Apache did that cañada or the little spring in it have any name at all?

A. We, the shepherd boys, called the spring, which was inside of the Antonio Chaves grant, the Chupidero.

Q. Why did the boys call that spring the Chupidero?

A. Because the quantity of water taken from it was very small, and was only sufficient to be taken and put in barrels and not sufficient to water the burros.

153 Q. Was that spring ever in your time called La Jara?

A. Never.

Q. Were there any willows growing around that Chupidero spring in that cañada?

A. There never have been any; neither will there be any while there is a world.

Q. Is the land there adapted to the growth of them?

A. The willows could not grow there in those times when it would rain, much less grow there now when it is so dry.

Q. What kind of shrubbery did grow there?

A. Some palo blanco, some oak trees, sage, and some willow trees.

Q. Is palo blanco a thorny shrub?

A. It is a thorny tree, and we call it palo blanco because the surface is white.

Q. You were in the employ of Antonio Chaves eight years and nine months caring for his flocks. How long after you left the employ of Antonio Chaves was this Apache, Araveche, killed?

A. I have stated -while ago was twenty-five years after.

Q. State whether or not you and your fellow-herders defended that grant against the Indians.

A. Against the Indians and against the Spanish. I had orders as caporal to drive from it all kinds of stock belonging to other parties, and when the Indians came there, as a matter of course, we had to drive them out—defend our homes against them.

154 Cross-examination by Mr. REYNOLDS:

Q. You say this man Araveche was killed about twenty-two years ago?

A. They killed him at the Cañada Araveche, near by the spring.

Q. There is a spring over there, isn't there?

A. There is a spring at that place, the Chupidero.

Q. You used to herd sheep in the early days out in that country, didn't you?

A. Always in the grant of Don Antonio.

Q. You used to herd the sheep out in the Araveche cañada, didn't you?

A. In those days *they* were no Araveche; it was the cañada of Don Antonio, and he had a right there.

Q. What did he call it before then?

A. The cañada.

Q. That was the only cañada on the grant, was it?

A. Yes; he gave it the name of Araveche after he was speared with arrows.

Q. There is no other cañada on the grant?

A. There are very many of them.

Q. They didn't have any names, did they?

A. They have various names.

Q. Will you give them?

A. Yes; Ojo de la Jara first, Rancho del Chado, Rancho de la Trejo, Ojo del Oso, La Cañada del Agua, Padero Babijuilla.

155 I am stating the cañadas that had water.

Q. State them all.

A. I can't give the names of them that have water now, though I cannot give the names of the cañadas in the mountains, because there are many, unless I would take a notary with me to state them down.

Q. This cañada was as well defined as some of the others, wasn't it?

A. It was a water can; they called it Chupidero. In those times it did not have the name of Araveche. We gave it that name—I myself.

Q. In what year?

A. I can't recollect the years because I am not very proficient in mathematics—from that time when I knew it until the time I am stating now.

Q. When was that?

A. I have been stating that time; I commenced herding sheep when I was fifteen years old, and it is sixty years ago that I knew it.

Q. Sixty years ago did you herd any sheep out as far as the La Jinza spring?

A. I pastured La Jinza; I pastured over all of the tract of Don Antonio; I pastured as far as Las Cruces, and on the river side I pastured as far as the Rio Grande, and to Peña Blanca, and I pastured as far as the Rio Puerco.

Q. You working at that time for Chaves, weren't you?

156 A. I have not worked for any one else.

Q. And you pastured all the way from the Cruces to the Valles?

A. Yes, for several years.

Q. And from the Rio Puerco to the Rio Grande?

A. Yes, sir; and also on this side of the river.

Q. Did you ever know of a settlement being made at Araveche?

A. At that time there was no settlement or ranch of any kind on that place that they now call Araveche on account of that man being killed there, because I never allowed them to come upon it and pasture on it.

Q. Were you there all the time?

A. I have said that I was not there all the time; I was with the sheep, and I have stated the land over which I have pastured.

Q. Your cor-als were down next to the Rio Grande?

A. The cor-als were at the Alamillo or grant of Don Antonio Chaves.

Q. The Alamillo is off in the northeast corner, is it not?

A. (No reply.)

Q. Is it down on the river?

A. Yes, sir.

Q. You say there are no willows at the Araveche now?

A. I have not been upon it recently. I said there would be no willows on it at any time; I can see that.

Q. You are certain there are none there now?

A. I am certain there is none would grow there unless 157 they were planted.

Q. There is nothing but a little spring there now?

A. I have not been down upon it now; I have not been by the place in five years.

Q. You don't know how big that spring is now?

A. I do not know; I do not know what the condition of the place may be, but the condition left by the flocks was very bad.

Q. Do you know what the southwest corner of this grant is?

(INTERPRETER: He says he does not understand what the "southwest corner" is.)

Q. Do you know where the Bear springs are?

A. Yes, sir; if they put a blind over my eyes I would go straight to the place; my horse himself would take me to the place.

Q. Is there a great deal of water there?

A. They have taken a good deal of water out for use.

Q. Any willows there in the early days?

A. No; there were some oak trees there.

Q. Do you know where the Pueblo springs are?

A. Yes, sir; they are right on the road. I can go with great accuracy to these springs.

Q. On this grant, are they?

A. The grant is from the Ojo de la Jara to the Ojo de la Pueblo to the south.

Q. Then the south boundary of the grant is the Pueblo spring, is it?

158 A. Yes, sir.

Q. Do you know where Magdalena City is?

A. Yes, sir.

Q. The line goes pretty near down to Magdalena City, doesn't it?

A. No; only to the Pueblo spring.

Witness excused.

And the further hearing of this cause was adjourned.

Now, on this day, both parties being present by counsel, the fur-

ther hearing of this cause was proceeded with on behalf of the plaintiff.

Mr. KNAEBEL: I offer in evidence the field-notes and plat of the survey by the Government of the Antonio Chaves grant.

Mr. REYNOLDS: The Government objects, it being incompetent and immaterial and having no tendency to bind the Government in any way.

(The said field-notes so introduced are annexed as Plaintiff's Ex. No. 5.)

MARTIN B. HAYS, introduced as a witness in his own behalf, testified as follows:

Direct examination by Mr. KNAEBEL:

Q. You are the plaintiff in this case?

A. I am.

159 Q. Did Anastacio Garcia ever in your presence or hearing or to our knowledge make any statement or suggestion to the effect that the boundary of the Antonio Chaves grant claimed by him extended on the west to a point or spring called the Araveche or any other spring in that community?

A. No, sir.

Q. Did you ever have anything to do, in suggestions, directions, or otherwise, about the location of or with reference to the fixing or location of the Oje de la Jara as the western point of the said grant?

A. I did not; I never while there, either by words or otherwise, suggested to them where it was.

Q. Do you recollect the fact of your meeting Anastacio Garcia and other Mexicans in Polvareda, at or in the vicinity of the house of Luciano Chaves, seventeen or eighteen years ago?

A. I can't tell you exactly in years; I think, if I remember correctly, it was in '78; I remember the time; it was at the resurvey — was ordered from Washington, and I met on the river front a corps of surveyors. I went with some men down to Polvareda, and I called the surveyors out and we established the southeast corner—Pablo Garcia's ranch, as reputed to join there; that and the Antonio Chaves join there on the south, and the first survey had included these people inside of the boundary line of the Alamillo grant, but

160 I desired to be friendly with these people, they having cultivated fields there and grape orchards. I preferred taking off

a strip there and go outside of these possessions than to have any trouble about their interests, so he calls a meeting of the men there, and I was there to meet them—I suppose twenty were there; I forget who was with me, but if I remember correctly Joe Shaw was there—

Q. He is now dead?

A. Yes, sir; and Shaw explained to them that there was going to be a resurvey of the Alamillo grant, and that they were not to be included in the Antonio Chaves grant, but that we wanted to agree upon where the line should be, — as to settle that question forever.

Q. Was there any discussion about the Ojo de la Jara spring?

A. There was nothing said about it.

Q. Was there anything said about the line at the spring?

A. I heard none.

Q. With whom did you first enter into negotiations for the purchase of the Alamillo grant?

A. Anastacio Garcia and Rafael Luna.

Q. Did you meet Anastacio Garcia on the grant on that occasion?

A. Negotiations were made at Los Luna's; him and his brother was together, and Mr. J. Francisco Chaves was interpreter for us.

Q. After that did you meet Anastacio Garcia at his house?

A. I was there very frequently—I was there and stayed days.

Q. Who was your interpreter on any of those occasions?

161 A. As it would happen, I had nobody with me as interpreter, Mr. George Way, who was doing some surveying for me, acting as interpreter very often; I had some men trying to open some copper about three miles from the river; he talked Spanish, but there wasn't very much talking to do.

Q. Is George Way living or dead?

A. Last time I heard of him he was living at and owned part of a mining camp.

Q. State — while at the house of Anastacio Garcia or while on the grant reference was made by him to the locality of the Ojo de la Jara, the western call of the grant—whether he made any statement to you or in your presence on the subject.

A. I remember asking him where it was, and how far it was. "Poniente," he said, and pointed to the west, to right where it is located, in the Bear mountains.

Q. What else did he say about going there?

A. He said it was a day's ride on a mule. I tried to get him down to miles, but he said he didn't know anything about miles, but it was a day's ride on a mule.

Q. State whether or not you have been in the vicinity of the Ojo de la Jara.

A. Yes, sir; I have passed there many times.

Q. Describe the appearance of the Ojo de la Jara; explain the growth thereabouts.

A. I know it was quite a good spring, and the growth of willows I found quite marked. I should say there are as much as two 162 or three acres, covering over, perhaps, a city block, and right above the spring appears the Bear mountains—a good range for stock and sheep; grass grows plentifully and the trees furnish shelter, as the growth of trees above there is quite marked.

Q. In what year did you first go over that grant?

A. In '73.

Q. Did you become connected with it in any way, as early as that?

A. Papers here in the office will show. I think it was in May, '73, or May, '74.

Q. I ask you if you became connected with it at that time?

A. Yes, sir.

Q. Was the grant surveyed at that time?

A. No, sir.

Q. Was the Socorro either?

A. No, sir; no appropriation had been made for it.

Q. How many times have you been on that grant?

A. I suppose twenty or twenty-five times.

Q. What did the people in the vicinity say as to the boundaries of that grant?

A. Now?

Q. At any time.

A. I had conversations with the people down on the river—Mr. Vigil, for one—and a prominent merchant at Socorro, Antonio Abeytia.

163 Q. Did you talk with Judge Shaw?

A. Yes, sir.

Q. He is dead now?

A. Yes; he had a Mexican wife, I remember—

Q. State whether you frequently heard as a common subject of conversation, as to this Ojo de la Jara and where it was.

A. I talked with people frequently living on the river; there were very few people living west of the river—over a mile.

Q. Did you ever by conversation, rumor, or otherwise ever hear of any Ojo de la Jara except the spring in Bear mountains?

A. No, sir; I never heard it even suggested by anybody. I remember well the people would frequently talk about others running their sheep on this grant, and they all knew about how far west the grant run.

Q. What did they say on that subject?

A. They said the grant took in Bear mountain.

Q. Describe the Arroyo de la Jinza, north of the Cañada Araveche.

A. I never heard of the latter. The La Jinza arroyo heads way up to the north of the Magdalena mountain and runs pretty nearly east until you get down about the center of the grant—little east of center—and it there bears north and crosses the line and empties into the Salada.

Q. State whether or not in your preliminary examination of the grant you looked into the question of the springs that were on it with a view to ascertaining the springs and the amount of water that flowed from them.

164 A. I went to half a dozen or more springs, as that was a matter of great importance, to my mind, and I wanted to ascertain them and estimate their capacity.

Q. Did you ever see the spring called here the Araveche spring?

A. Never did.

Q. Did you ever at any time, until the evidence introduced by the Government in this case, hear it even intimated that the Ojo de la Jara was not where it was located by the surveyors of that grant? Did ever anybody, in conversation or otherwise, ever intimate such a fact?

A. No, sir; I never did.

Q. State whether or not there are any willows growing in that part of the grant—there around the La Jinza arroyo and south of that.

A. I have been up and down that arroyo perhaps eight or ten times and I don't remember of ever seeing any willows; there is no spring there. There is a little spring to the west of the Jinza arroyo, called the Carbon spring, but it has been dug up, I believe, by the stock.

Q. In the testimony given here reference was made to statements of others, made while somebody was sworn, at the house of this justice of peace, that you were trying to claim more land than Garcia intended to sell, or something to that effect—

Mr. REYNOLDS: I object to that question.

165 Q. (Continuing:) State fully and freely to the court all of your actions and efforts with reference to the surveying of the Antonio Chaves grant, and to any efforts by yourself to procure any land in that survey in excess of or as part of that in the survey now existing.

A. I will have to tell it in my own way. I first visited Mr. George Way, a deputy mineral surveyor, living at Salado, a man probably 58 or 60 years old, and I made a bargain with him to go with me, showing the grant out. I had a copy of the title papers with me, and I knew this man was familiar with this country and more likely to find any locations on the grant, as I had been frequently told there was some coal on this grant. Well, we went around by the Ojo de la Jara, around Bear mountain, the Ventana spring and the La Jinza spring, and all the different springs. At the Carrizo spring he pointed out to me this coal, and after that I got him to make a thorough examination of the grant, to estimate what there was in it. He said he couldn't state exactly, but that he thought it would pan out pretty handsomely. By that time I had made arrangements with the owners for it. It was estimated as containing two hundred and fifty to six hundred thousand acres. I applied for a survey, but there was no appropriation for a survey at that time, and I couldn't get the surveyor general to have one made. After that I went to Mr. Proudfoot, surveyor general, and deposited the money with him—fifteen hundred dollars—and said,

166 Send for one of your deputies and let him go and make a survey. He said it would be an unofficial survey. I didn't care, said I, I would like to know whether there are fifty thousand or one hundred and fifty thousand acres there. He sent a man by the name of George H. Pradt, and he went down and run the survey. He run west to the Ojo de la Jara spring, and then run south to a point which would be the north boundary line of the Socorro grant, if that was now protracted. The western boundary line of the Alamillo grant is west of the Socorro grant about six miles, and the way we construed our title papers was that the north boundary of the Socorro should be our south boundary. After fixing the south boundary he went north to the Magdalena mountain—that is, we estimated the point on the river named in the title papers for

the north was the Magdalena mountain. This land in here (indicating with his hands) was then in the Antonio Chaves grant, and from this northeastern boundary line at the river he run to the Ojo de la Jara spring, thus closing up the survey.

Q. Tell what springs to the south they took in.

A. He took in the spring at the Magdalena called the Ojo del Pueblo, and the line is west of that spring, where the Government made its first survey, but afterwards I found they didn't go that far.

Q. That was after the Government had made an appropriation for an official survey?

A. Yes, sir.

Q. Then this was after the survey was made?

167 A. Certainly. The first one, I was not down there at all.

General Atkinson's result was a good deal less than I expected. It included land that did not belong to the grant and left out land that did. I undertook to convince the surveyor general that the survey was wrong and that an examination of the title papers would conclusively show that the lines had not been run properly; that the way to make a survey, when three points are given, was to take the point here on the river first and then run to the Ojo de la Jara, and then due south to a point that would intersect with a line drawn from the other point named on the river. I tried to convince him, but he wouldn't see it that way, and so I entered a protest against that survey, and by the assistance of some friends in Washington I got another survey ordered. When I was informed by General Atkinson that another survey would be made I left for Alamillo station, and there met Mr. Sawyer, the man in the field, and then it was that we called out these people from Polvareda to establish that southeast corner at the river. We agreed upon that, and I left the surveyors there in the field and went over in Grant county, where I had some matters to attend to, and was not with them at all. They run their survey and didn't vary a particle from the first survey. The instructions, I suppose, from the surveyor general's office were the same. Now, in conclusion, Mr. George Way run us to the Ojo de la Jara spring, where it is now, and then Mr. Pradt run his survey to the same point—an unofficial survey at the time—and the Government making two surveys, and each time going to that same point. I did not

168 give any advice to them; they were directed entirely by the papers, and construed them and picked out their way for themselves, and so far as trying to get more land than the grant implies, I didn't ask the other people about it at all. I went by the title papers.

Q. Did you ever make any efforts with reference to the moving or the selection of a point as the Ojo de la Jara spring west of the spring that had been adopted by them?

A. Yes; I told the surveyor general that I was informed by Mr. George Way and others that there was quite a considerable spring west of this Ojo de la Jara that they established as the western boundary, and he said, Whether there were Ojo de la Jaras west of

A. It was in the possession of Mr. Hiram G. Bond, the mortgagee of the property.

Q. Did he tell you about Mr. Brown re-running the lines and re-monumenting the Government's survey, and then made him a map of it?

A. Yes; Mr. Brown followed the line indicated in the field-notes; he went along the old survey.

Cross-examination by Mr. REYNOLDS:

Q. You don't suppose, Mr. Hays, that copper and coal was the inducement that led Antonio Chaves to petition for this grant in 1825, do you?

A. I don't know what his motive was.

Q. Don't you suppose that a man applying for a grant in 1825 it was with a different motive than he would now?

A. I suppose, possibly, he would.

Q. Do you know the A—

A. Yes, sir.

Q. Where is it with reference to the La Jinza spring?

A. It is west from the Rio Grande river.

Q. Is it at the head of the San Lorenzo arroyo?

A. I would not say; it is west of the river about five and a half or six miles and southeast from the San Lorenzo spring.

Q. You were informed that that was a boundary there between the Socorro and the Alamillo or La Jinza grant?

A. I did not know that a boundary was there. In those days very few people knew anything about the boundaries of the 173 grant, outside of the parties interested, and you can see why.

Q. You never heard until now of the Cañada Araveche?

A. No, sir; never did.

Q. You say you have been to the La Jinza?

A. Yes, sir.

Q. What is that other spring called, near there?

A. The Carbon; but none of these springs have any established name outside of the San Lorenzo, La Jinza, Carrizo, and Ojo de la Jara.

Q. How far west of the Arroyo San Lorenzo is this Carbon spring?

A. It may be two miles. In most of these springs they have to dig down, make a hole, and let the water run in.

Q. Marshy, was it not, with wil-ows growing around, and that's why they called those springs outside of Bear spring Ojo de la Jara also?

A. I never saw any spring outside of the Ojo de la Jara that had any willows.

Re-examination by Mr. KNAEBEL:

Q. I want to know whether, outside of the coal and copper, the grant possessed any quantities that would lead Antonio Chaves to want to acquire it?

A. I guess only for grazing purposes.

Mr. REYNOLDS: I desire to enter a general objection to this testimony as incompetent and immaterial, as referring to matters which have taken place subsequent to the treaty of Guadalupe Hidalgo, and as having no tendency to establish the true boundaries.

By the COURT: Admitted subject to the objection.

Plaintiff read in evidence the foregoing deposition of Hiram G. Bond.

Plaintiff rests.

174 *For the Government—Rebuttal Testimony.*

L. M. BROWN, recalled for the defendant, testified as follows:

Examination by Mr. REYNOLDS:

Q. You are the same Mr. Brown that witness Pablo Sanchez testified he met in a buggy, are you not?

A. Yes, sir.

Q. Do you remember meeting him on the road, which he testified to, with Mr. Baca with you?

A. Yes, sir.

Q. Will you please state the conversation had between you?

Mr. KNAEBEL: I object to that question because no proper foundation has been laid for it.

By the COURT: Admitted subject to the objection.

A. I asked him if he knew the Ojo de Araveche and where it was. He said he did. I further asked him if he had ever heard it called La Jara. He said, No.

Q. I will get you to state whether you were in the employ of the United States looking up testimony in this case.

A. I was.

Q. Did you make any reference to the Ojo de la Cobre in speaking to Mr. Sanchez?

A. I never heard of that spring before.

No cross-examination.

Witness excused.

LUCIANO CHAVES, recalled on behalf of the United States, testified, in Spanish, as follows:

Examination by Mr. REYNOLDS:

Q. Do you know the Araveche spring situated on the Antonio Chaves grant?

A. Yes, sir.

Q. When did you first know it?

A. It was about the year '53, '54, or '55; I was a boy then.

Q. What were you doing there?

A. I was with my grandfather, lambing some sheep, in the month of April.

Q. What condition did you find it with reference to the growth around it? What kind, if any, growth did you find around the spring at that time?

Q. The Cañada Araveche is about two miles long to the place where it joins the Cañada de la Jinza, and from the place to the head of the cañada, where the spring is, it is very sandy. The cañada may be a thousand yards broad at some places and only a few yards in other places. There are some vega grass there in the vicinity of those springs and there are some willows and there are some oak trees and there are some palo blanco and tule. There are no willows there now except the stumps of them.

Q. What has become of the willows?

A. The cattle have destroyed them.

Q. Are there evidences of them there yet?

A. There are a good deal in the distance of three or four hundred yards on each side of the springs—shoots of them.

Q. I will get you to state whether or not they are beginning to grow again.

A. I do not know whether the cattle and sheep will let them grow.

Q. Did you ever hear of the Araveche known by any other name?

A. Yes, sir.

176 Q. What other name?

A. La Jarita or La Jara.

Q. Do you know the La Jinza also?

A. Yes, sir.

Q. I will get you to make a comparison as to the quantity of water in each; which had the most at the time when you first knew them?

A. At the time when I first went there, in the year '53 or '54, the quantity of water in the Araveche was about four times that of the La Jinza.

Q. How many sheep did you have there at the Araveche?

A. About two thousand sheep, more or less.

Q. Where were they watered?

A. The men would dig up the water and make a big tank and the water would run in, and there is the place where we would water the sheep.

Q. I will get you to state what is the condition of the spring the last time you saw it.

Q. About two weeks ago I saw it, and the spring was in a very bad condition. There is very little water at the upper part; there is a rock at the spring seventy or one hundred feet high, and at the bottom of the spring it is full of sand now. It seems to me that there is about three or four feet of sand in the spring.

Q. How far from where the Cañada Araveche joins the La Jinza is this rock?

A. About two miles, but not all of it is rock. For a distance of

177 about one mile the cañada is very wide—is about one mile wide—and from that place to the spring it is very narrow, and there are a great many quantities of rock on the sides.

Q. The growth of willows that you refer to, are they in the Cañada Araveche or the Cañada de la Jinza ?

A. At the Cañada Araveche—some call it the Cañada Araveche and some call it the spring of Araveche—and that is the difference existing between us.

Cross-examination by Mr. KNAEBEL :

Q. What is the distance from the spring that you call Araveche spring to the La Jinza spring ?

A. It is about three miles, more or less.

Witness excused.

This was all the testimony and case was submitted.

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PLAINTIFF'S EXHIBIT No. 3.

On this 4th day of October, 1877, before Meluciano Chaves, a juez de paz in and for the county of Socorro, Territory of New Mexico, personally appeared RUMALDO CHAVES, of lawful age, and who, having been by me first duly sworn, deposeth and saith in answer to the following interrogatories :

Question. State your name, age, and place of residence.

Answer. My name is Rumaldo Chaves; my age is seventy-two years; I reside at Polvadera, in Socorro county, Territory of New Mexico.

Ques. Are you acquainted with the San Lorenzo or Alamillo grant; and, if so, how long have you known it?

Ans. I have known it for forty years or more.

Ques. Do you know the location of the mesita of Alamillo and its little table-lands, which form the north boundary call of said grant; if so, where is it located?

And. I know the location of the little table-lands of Alamillo and the mesita. It is situated on the west bank of the Rio Grande. The table-lands run northwest to Ladron mountain and many miles northwest from Ladrone mountain.

Ques. Do you know the location of the north line of Pablo Garcia's ranch, which forms the south boundary call of said grant; if so, where is it located?

Ans. I know its location. It is situated on the west bank of the Rio Grande, about half mile south of the mouth *fo* Ar-o-ya San Lorenzo. The north line of said ranch runs southwest from a cottonwood tree, near the acequia, towards Magdalena mountain, which I have this day helped to establish.

Ques. Do you know the location of the Jara spring, which forms the west boundary call of said grant; and, if so, where is it situated?

Ans. Jara spring is west from the Rio Grande about thirty miles, more or less.

Ques. How do you know the location of these natural objects?

Ans. From a personal knowledge and general reputation since I can remember.

Ques. Have you any interest in said grant; and, if so, what interest have you?

Ans. I have no interest in the San Lorenzo grant.

his
RUMALDO x CHAVES.
mark.

Subscribed in my presence and sworn to before me this 4th day of October, 1877.

On this 4th day of October, 1877, before me, Luciano Chaves, a ju-s de paz in and for the county of Socorro, Territory of New Mexico, personally appeared Franco Chaves Marquez, of lawful age, and who, having been by me first duly sworn, deposeth and saith in answer to the following interrogatories:

Question. State your *anem*, age, and place of residence.

Ans. My name is Franco Chaves Marquez, my age is seventy years, and I reside at Polvadera, in Socorro county, Territory of New Mexico.

Ques. Are you acquainted with the San Lorenzo or Alamillo grant; and, if so, how long have you known it?

Ans. I have known — about forty years.

Ques. Do you know the location of the mesita of Alamillo and the little table-lands which form the north boundary call of said grant; if so, where is it located?

Ans. I know the location of the mesita of Alamillo and the little table-lands. It is situated on the west bank of the Rio Grande; the table-lands runs about northwest to Lodran mountain, and having mills northwest from Lodran mountain.

Ques. Do you know the location of the north line of Pablo Garcia ranch, which forms the south boundary call of said grant; if so, where is it located?

Ans. I know its location. It is situated on the west bank of the Rio Grande, about half mile south of the mouth of the arroyo of San Borengo. The north line of said ranch runs about southwest from a cottonwood tree near the acequia, towards Magdalena mountain, which I have this day helped to establish.

Ques. Do you know the location of the Jara spring, which forms the west boundary call of said grant; and, if so, where is it situated?

Ans. No.

Ques. How do you know the location of these natural objects?

Ans. From a personal knowledge and general reputation since I can remember.

Ques. Have you any interest in said grant; and, if so, what interest have you?

Ans. I have no interest in the San Lorenco grant.

his
FRANCO. CHAVES x MARQUEZ.
mark.

Subscribed in my presence and sworn to before me this 4th day October, 1877.

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PLAINTIFF'S EXHIBIT No. 5.

Field-notes of the Survey of the Antonio Chavez Grant No. 79, Known as the Arroyo de San Lorenzo Tract, in Socorro County, New Mexico, by Sawyer and White, U. S. Dep. Surveyors, under Their Contract No. 76, of Aug. 8, 1877.

Survey commenced June 1st, 1878; survey concluded June 12, 1878.

Survey of the Antonio Chavez Arroyo de San Lorenzo tract.

The boundaries of this grant as stated in the special instructions of the surveyor general of Aug. 8, 1877, are "on the north, where the small table-land of the Alamillo begins; on the east, the Del Norte river; on the south, a small forked cedar tree in the middle of the land of the Pablo Garcia ranch, commonly so called, this little cedar being on the same side with the main road which is traveled toward said Socorro, on the side of the meadow; on the west, the spring known as the Jara spring."

These instructions furthermore say:

* * * "Your lines will be established by meandering the west bank of the Rio Grande on the east and the south edge of the Alamillo table-land on the north, and running along the coterminous boundary of Pablo Garcia's land on the south and a north-and-south line through the east edge of the Jara spring on the west."

The following additional instructions are also referred to:

SURVEYOR GENERAL'S OFFICE,
STA FE, NEW MEXICO, May 24, 1878.

Messrs. Sawyer & White, deputy surveyors under contract No. 76.

GENTLEMEN: In your letter of today you ask for further instructions for the survey of the Antonio Chavez (Alamillo or San Lorenzo arroyo) grant No. 79, concerning the south boundary of which you state there is a question among the parties in interest as where the north boundary of the Pablo Garcia ranch really is, that boundary being the south boundary of the Alameda grant.

The south boundary of the Alamillo grant (which is the north boundary of the Pablo Garcia tract) is described in the official

translation of the grant papers and in my special instructions to you of the 8th of August last as being "on the south of a small forked cedar tree in the middle of the land of the Pablo Garcia ranch, commonly so called, this little cedar being on the same side with the main road which is traveled towards said Socorro, on the side of the meadow." The original Spanish (with spelling corrected) of the translation above granted is "por el sur un sabinito horquetudo que esta en la inmediacion del rincon del rancho de Pablo Garcia que comunmente llaman. Este sabinito esta para el lado del camino real que se transita al dicho Socorro a la parte de la vega." I find upon a critical examination of the original Spanish here quoted that the word "middle" in the translation should have been underlined vicinity. This circumstance will no doubt aid you in finding the true locality of the tree referred to, which I presume you had searched for in or about the middle of the bend. Among the papers on file in this office, the testimony of Juan Francisco Baca, taken in 1873, who therein declared he placed the grantee, Chavez, in possession of the grant in or about the year 1822, and that the tract is bounded "on the south by the ranch of Pablo Garcia, the line running towards a forked cedar tree about a mile and a half from the river." Of course it is indispensable to a correct survey that the north boundary of the Garcia ranch or land be ascertained and used, whether or not the tree or its locality be found. The Alamillo survey will — coterminous with the Garcia boundary, and should this not extend the whole length of the south boundary of the Alamillo and not have been an east-and-west line, the Alamillo will extend west from where the Garcia land terminates. If after finding and determining the boundary calls to your satisfaction and surveying accordingly, parties in interest complain to you, objecting to the surveys made, you will refer them to the surveyor general at Santa Fé for a hearing in the premises.

Very respectfully,

HENRY M. ATKINSON,

Surveyor General.

South Boundary of the Antonio Chavez Arroyo de San Lorenzo Tract.

I began the survey of this grant at its S. E. cor., at a point upon the west bank of the Rio Grande near the N. W. cor. of the Pa. Garcia ranch as located by the witnesses. The buildings of the ranch have been washed away by the river, and the forked cedar tree has also been destroyed; therefore ran due west, according to instructions, to intersection of line south from east edge of the Jara spring, for the location of which see evidence herewith submitted; also for the other boundary calls of this grant, where set a sandstone 18 x 12 x 6 in. half way in the ground, marked A. C. beg. cor. on N. W. face, and raised a mound of stone $2\frac{1}{2}$ ft. high for the S. S. cor., from which—

Southern point of Mesita Aleman brs. N. $25^{\circ} 15'$ E.

High point on opposite side of rivers brs. S. $66^{\circ} 45'$ E., distant about 5 miles.

A large cottonwood tree on opposite side of river brs. S. $45^{\circ} 54'$ E.

From the S. E. cor. on south boundary, as previously established,
I run—

West 1st mile; va., $12^{\circ} 23'$ E.

- 2.10 A cottonwood tree 18 in. dia. on line.
- 2.20 Acequia, 30 lks. wide; course N. E.
- 17.41 Road; course S. E. and N. W.
- 23.40 Road; course S. E. and N. W.
- 37.84 Road; course N. and S.
- 45.20 Telegraph line; course N. and S.
- Road; course S. E. and N. W.
- Road; course N. and S.
- 50.00 Acequia, 1 ch. wide; course S.
- 62.00 Road; course S. E. and N. W.
- 66.00 Road; course N. and S.

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- 67.00 Enter foot-hills of Polyvadera mts., course N. and S.
- 80.00 Set a sandstone $12 \times 8 \times 7$ in. half way in the ground, marked 1 M. on E. side and raised a mound of stone $2\frac{1}{2}$ ft. high for 1-mile cor.
- 1st 67 chs. 2nd-rate bottom land, with grass; balance stony, 3rd rate.

West on 2nd mile; va., $12^{\circ} 23'$ E.

- 45.00 Road, course S. E. and N. W.
- 80.00 Set a sandstone $15 \times 12 \times 4$ in. half way in the ground, marked 2 M. on E. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 2-mile cor.
- Low, rolling hills; stony, 3rd-rate land; poor grass.

West on 3rd mile; va., $12^{\circ} 20'$ E.

- 2.00 Arroyo, 10 chs. wide; course N. E.
- 80.00 Set a sandstone $16 \times 12 \times 8$ in. half way in the ground, marked 3 M. on E. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 3-mile cor.
- Low hills, sloping east; 3rd-rate, stony soil; poor grass.

West on 4th mile; va., $12^{\circ} 23'$ E.

- 4.00 Arroyo, 1 ch. wide; course N. E.
- 41.00 Arroyo, 50 lks. wide; course N.
- 74.00 Ascend high ridge, b'rs N. and S.
- 80.00 Set a sandstone (too rocky to dig) $12 \times 8 \times 7$ in., marked 4 M. on E. side, in a mound of stone $2\frac{1}{2}$ ft. high, for 4-mile cor.
- Broken, stony, 3rd-rate land; poor grass.
- Corner on rocky ledge.

West on 5th mile; va., $12^{\circ} 23'$ E.

- 11.00 Top of ridge.
- 26.00 Foot of ridge b'rs N. and S.
- 80.00 Set a sandstone $12 \times 3 \times 3$ in. half way in the ground, marked 5 M. on E. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 5-mile cor.
3rd-rate land; rocky ridges with a general slope E.; poor grass.

West on 6th mile; va., $12^{\circ} 23'$ E.

- 80.00 Set a sandstone $14 \times 8 \times 6$ in. (too rocky to dig) in a mound of stone $2\frac{1}{2}$ ft. high; stone marked on E. side 6 M. for 6-mile corner.
3rd-rate land; rough, rocky ridges; poor grass.

West on 7th mile; va., $12^{\circ} 23'$ E.

- 37.00 Begin to ascend ridge; b'rs N. and S.

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- 43.00 Top of ridge b'rs N. and S.
- 68.00 Foot of ridge b'rs N. and S.
- 80.00 Set a sandstone $16 \times 12 \times 10$ in. half way in the ground, marked 7 M. on E. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 7-mile corner.
3rd-rate, broken land; good grass.

West on 8th mile; va., $12^{\circ} 26'$ E.

- 14.00 Top of ridge } b'rs N. and S.
- 19.50 Foot of ridge } b'rs N. and S.
- 80.00 Set a sandstone (too stony to dig) $18 \times 12 \times 8$ in., marked 8 M. on E. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 8-mile corner.
3rd-rate land; rough, broken hills; good grass.

West on 9th mile; va., $12^{\circ} 26'$ E.

- 54.00 Road; course N. and S.
- 55.00 1.50 chs. S. to the 9th-mile cor. on N. boundary of Socorro grant.
- 74.00 Edge of prair-e, N. and S.

Va., $12^{\circ} 29'$ E.

- 80.00 Set a trap-stone $12 \times 7 \times 8$ in. half way in the ground, marked 9 M. on E. side, and raised a mound of earth $2\frac{1}{2}$ ft. high, with 4 pits $24 \times 18 \times 12$ in. deep, for 9-mile cor.
1st 74 chs. broken, stony, 3rd rate; bal., 2nd-rate land; good grass.

West on 10th mile; va., $12^{\circ} 29' E.$

- 80.00 Set a trap-stone 6 x 10 x 5 in. about 4 in. in the ground, marked 10 M. on E. side, and raised a mound of earth $2\frac{1}{2}$ ft. high, with 4 pits 24 x 18 x 12 in. deep, for 10-mile cor.
Level 2nd-rate land; good grass.
June 1st, 1878.

West on 11th mile; va., $12^{\circ} 15' E.$

- 80.00 Set a trap-rock 6 x 7 x 4 in. half way in the ground, marked 11 M. on E. side, and raised a mound of earth $2\frac{1}{2}$ ft. high, with 4 pits 24 x 18 x 12 in. deep, for 11-mile cor.
2nd-rate, level land; good grass.

West on 12th mile; va., $12^{\circ} 9' E.$

- 75.00 Enter valley of the Jenza.
80.00 Set a trap-rock 15 x 10 x 6 in. half way in the ground, marked 12 M. on E. side, and raised a mound of earth $2\frac{1}{2}$ ft. high, with 4 pits 24 x 18 x 12 in. deep, for 12-mile cor.
184 2nd-rate land; good grass.

West on 13th mile; va., $12^{\circ} 12' E.$

- 45.00 Leave valley, ascend ridge; b'rs N. and S.
51.10 Top of ridge b'rs N. and S.
80.00 Set a trap-rock 12 x 10 x 6 in. half way in the ground, marked 13 M. on E. side, and raised a mound of earth $2\frac{1}{2}$ ft. high, with 4 pits 24 x 18 x 12 in. deep, for 13-mile corner.
2nd-rate, level, prairie land; good grass.

West on 14th mile; va., $12^{\circ} 12' E.$

- 80.00 Set a trap-rock 15 x 5 x 2 in. half way in the ground, marked 14 M. on E. side, and raised a mound of earth $2\frac{1}{2}$ ft. high, with 4 pits 24 x 18 x 12 in. deep, for 14-mile corner.
2nd-rate, level, prairie *level* land; good grass.

West on 15th mile; va., $12^{\circ} 13' E.$

- 80.00 Set a trap-rock 10 x 8 x 7 in. half way in the ground, marked 15 M. on E. side, and raised a mound of earth $2\frac{1}{2}$ ft. high, with pits 24 x 18 x 12 in. deep, for 15-mile corner.
2nd-rate, level, prairie land; good grass.

West on 16th mile; va., $12^{\circ} 13' E.$

- 80.00 Set a trap-rock 10 x 8 x 6 in. half way in the ground, marked 16 M. on E. side, and raised a mound of earth $2\frac{1}{2}$ ft. high, with pits 24 x 18 x 12 in. deep, for 16-mile corner.
2nd-rate prairie land; good grass.

West on 17th mile; va., $12^{\circ} 13'$ E.

- 69.00 Arroyo, 10 lks. wide; course N. E. and S. W.
 80.00 Set a trap-rock 13 x 11 x 9 in. half way in the ground,
 marked 17 M. on east side, and raised a mound of earth
 24 x 18 x 12 in. deep for 17-mile corner.
 2nd-rate, level land; good grass.

West on 18th mile; va., $12^{\circ} 13'$ E.

- 80.00 Set a granite stone 15 x 8 x 4 in. half way in the ground,
 marked 18 M. on E. side, and raised a mound of stone $2\frac{1}{2}$
 ft. high, with 4 pits 24 x 18 x 12 in. deep, for 18-mile cor.
 2nd-rate, level land; good grass.

West on 19th mile; va., $13^{\circ} 34'$ E.

- Thence, to avoid high hill, south on offset line 30 chs.
 Thence west on offset line.
 77.00 Foot of slope b'rs E.

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- 80.00 Set wit. 19-mile cor. 30 chs. south of true point by setting a
 granite stone 25 x 8 x 5 in. half way in the ground, marked
 19 M. on E. side, and raised a mound of stone $2\frac{1}{2}$ ft. high.
 3rd-rate stony land; good grass.

West on offset line 20th mile; va., $13^{\circ} 34'$ E.

- 3.20 Top of slope b'rs W.
 8.00 Foot of slope b'rs W.
 80.00 Set for witness 20-mile cor. 30 chs. south of true point a
 granite stone 14 x 8 x 6 in. half way in the ground, marked
 20 M. on E. side, and raised a mound of stone $2\frac{1}{2}$ ft. high.
 3rd-rate rough and broken land; good grass.
 June 2, '78.

West on offset line 21st mile; va., $12^{\circ} 12'$ E.

- 12.00 Foot of slope b'rs N. and S.
 27.00 Top of slope b'rs N. and S.
 43.00 Foot of slope b'rs N. and S.
 57.00 Offset north 30 chs. and regain line.
 80.00 Set a basalt stone 14 x 10 x 4 in. half way in the ground,
 marked 21 M. on E. side, and raised a mound of earth $2\frac{1}{2}$
 ft. high, with 4 pits 24 x 18 x 12 in. deep, for 21-mile
 corner.
 3rd-rate, rough, broken land; scrub piñon and cedar; good
 grass.

West (true line) 22nd mile; va., $11^{\circ} 59' E.$

- 80.00 Set a basalt rock 12 x 9 x 5 in. half way in the ground, marked 22 M. on E. side, and raised a mound of stone $2\frac{1}{2}$ ft. high, for 22-mile corner.
Rough, broken, 3rd-rate land; good grass.

West on 23rd mile; va., $11^{\circ} 28' E.$

- 80.00 Set a basalt stone 16 x 8 x 3 in. half way in the ground, marked 23 M. on E. side, and raised a mound of stone $2\frac{1}{2}$ ft. high, for 23-mile corner.
3rd-rate broken land; good grass, with scrub cedar and piñon.

West on 24th mile; va., $11^{\circ} 28' E.$

- 30.00 Foot of Bear Spring Mts., course N. and S.
40.00 Top of Bear Spring Mts., course N. and S.
51.00 Foot of Bear Spring Mts., course N. and S.
80.00 Set a trap-rock 12 x 6 x 5 in. half way in the ground, marked 24 M. on E. side, and raised a mound of earth $2\frac{1}{2}$ ft. high, with 4 pits 24 x 18 x 12 in. deep, for 24-mile corner.

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Rough, broken, 2nd-rate land; good grass.

West on 25th mile; va., $11^{\circ} 09' E.$

- 67.00 Arroyo 3 chs. wide, course S.
80.00 Set a basalt stone 18 x 16 x 12 in. half way in the ground, marked 25 M. on E. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 25-mile cor.
Broken, stony, 3rd-rate land; good grass.

West on 26th mile; va., $11^{\circ} 09' E.$

- 34.44 To a point determined by a blank line to be due south of the east edge of the Jara spring, the western boundary call of the grant, which is a universally known point, and is also identified in the evidence herewith submitted, where set for S. W. cor. of grant a basalt stone 24 x 20 x 14 in. half way in the ground, marked (S. W. cor., A. C.) on N. E. face, and raised a mound of stone $2\frac{1}{2}$ ft. high.
A high point in Gallinas Mt. b'rs S. $44^{\circ} 30' W.$
A bald point on Magdalena Mt. b'rs S. $30^{\circ} 28' E.$
June 4th, 1878.

*West Boundary of the Antonio Chavez Arroyo de San Lorenzo Tract.*North 1st mile; va., $11^{\circ} 09'$ E.

- 80.00 Set a malpais stone 20 x 10 x 6 in. half way in the ground marked 1 M. on S. side, and raised a mound of stone $2\frac{1}{2}$ ft high for 1-mile cor.
 2nd-rate soil; good grass.
 Piñon, cedar.

North 2nd mile; va., $11^{\circ} 09'$ E.

- 42.00 Deep arroyo 1 ch. wide, course W.
 74.00 Deep arroyo 2 chs. wide, course W.
 80.00 Set a malpais stone 16 x 10 x 8 in. half way in the ground, marked 2 M. on S. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 2-mile cor.
 2nd-rate stone land; good grass; cedar and piñon.

North on 3rd mile; va., $11^{\circ} 09'$ E.

- 18.00 Enter fallen timber scorched by fire.
 22.00 Arroyo 2 chs. wide, course W.
 54.00 Arroyo (deep) 1 ch. wide, course S. W.
 Leave fallen and enter standing timber.
 80.00 Set a basalt stone 18 x 12 x 4 in. half way in the ground, marked 3 M. on S. side, and raised a mound of stone $2\frac{1}{2}$ — for 3-mile cor.

North 4th mile; va., $12^{\circ} 42'$ E.

- 80.00 Set a basalt stone 14 x 10 x 6 in. half way in the ground, marked 4 M. on E. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 4-mile cor.
 Broken, stony, 3rd-rate land; good grass.

North 5th mile; va., $12^{\circ} 45'$ E.

- 16.00 Foot of hill, course E. and W.
 28.00 Top of hill, course E. and W.
 50.00 Foot of hill b'rs E. and W.; ascend another.
 65.00 Top of hill b'rs E. and W.
 80.00 Set a malpais stone 12 x 10 x 8 in. half way in the ground, marked 5 M. on S. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 5-mile cor.
 2nd-rate land; piñon and cedar; good grass.

North on 6th mile; va., $12^{\circ} 45'$ E.

- 11.00 Foot of hill b'rs E. and W.
 80.00 Set a malpais stone 24 x 18 x 12 in. half way in the ground, marked 6 M. on S. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 6-mile cor.
 2nd-rate land; good grass; cedar and piñon.

North on 7th mile; va., $12^{\circ} 45'$ E.

- 80.00 Set a basalt stone 14 x 10 x 4 in. half way in the ground, marked 7 M. on S. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 7-mile cor.
3rd-rate land, rolling, rough; good grass; cedar.

North on 8th mile; va., $12^{\circ} 45'$ E.

- 80.00 Set a sandstone of required size half way in the ground, marked 8 M. on S. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 8-mile cor.
Rough, rocky, and arroyos last 40 chs.; sandstone formation; 3rd-rate land; grass.

North on 9th mile; va., $12^{\circ} 45'$ E.

- 80.00 Set a sandstone 12 x 10 x 6 in. half way in the ground, marked 9 M. on S. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 9-mile cor.
3rd-rate hilly land; grass.

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North on 10th mile; va., $12^{\circ} 45'$ E.

- 30.00 Begin to ascend hill, b'rs E. and W.
62.00 Top of hill b'rs E. and W.
80.00 Set a basalt stone 14 x 8 x 4 in. half way in the ground, marked 10 M. on S. side, and raised a mound of stone $2\frac{1}{2}$ feet high for 10-mile corner.
3rd-rate, base, broken land.

North on 11th mile; va., $12^{\circ} 45'$ E.

- 3.00 Foot of hill b'rs N. and S.
80.00 Set a sandstone 20 x 6 x 6 in. half way in ground, marked 11 M. on S. side, and raised a mound of earth $2\frac{1}{2}$ feet high, with four pits 24 x 18 x 12 in. deep, for 11-mile cor.
3rd-rate land; grass.
June 5th, 1878.

North on 12th mile; va., $12^{\circ} 45'$ E.

- 80.00 Set a sandstone 16 x 10 x 8 in. half way in the ground, marked 12 M. on S. side, and raised a mound of stone $2\frac{1}{2}$ feet high for 12-mile corner.
3rd-rate land, with grass.

North on 13th mile; va., $12^{\circ} 45'$ E.

- 56.46 To eastern edge of the Jara spring, the western boundary call of the grant, where set for N. W. cor. a sandstone

24 x 10 x 7 in. half way in the ground, marked N. W. cor., A. C., on S. E. face, and raised a mound of stone $2\frac{1}{2}$ ft. high.

A high point of rock b'rs N. 66° E., distant about 66 chs.
 A high point b'rs S. $17^{\circ} 55'$ E., about 2 miles distant.
 A point of white rock b'rs S. $76^{\circ} 15'$ W., about 90 chs. dist.
 June 6, 1878.

Having previously determined that the course of S. $69^{\circ} 50'$ E. would strike the western extremity of the southern edge of the Alamillo table-land, the northern boundary call of the grant, from the N. W. cor., on north boundary, green.

S. $69^{\circ} 50'$ E., 1st mile; va., $12^{\circ} 51'$ E.

- 80.00 Set a sandstone 18 x 12 x 4 in. half way in the ground, marked 1 M. in N. W. face, and raised a mound of stone $2\frac{1}{2}$ ft. high for 1-mile corner.
 2nd-rate land; poor grass.

S. $69^{\circ} 50'$ E., 2nd mile; va., $12^{\circ} 51'$ E.

- 51.00 Sandstone ledge b'rs N. and S.
 54.00 Top of ledge b'rs N. and S.
 80.00 Set a sandstone 20 x 14 x 4 in. half way in the ground, marked 2 M. on N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 2-mile cor.
 2nd-rate soil; good grass.

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Some cedar trees.

S. $69^{\circ} 50'$ E., 3rd mile; va., $12^{\circ} 51'$ E.

- 80.00 Set a sandstone 12 x 6 x 4 in. half way in the ground, marked 3 M. on N. W. side; raised a mound of stone $2\frac{1}{2}$ ft. high for 3-mile cor.
 Rolling and broken, 2nd-rate land; good grass.

S. $69^{\circ} 50'$ E., 4th mile; va., $13^{\circ} 5'$ E.

- 80.00 Set a sandstone 14 x 10 x 4 in. half way in the ground, marked 4 M. on N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 4-mile cor.
 Rough, rolling, broken, 2nd-rate land; good grass; cedar brush.

S. $69^{\circ} 50'$ E., 5th mile; va., $13^{\circ} 5'$ E.

- 80.00 Set a sandstone 14 x 12 x 4 in. half way in the ground, marked 5 M. on N. W. side; raised a mound of stone $2\frac{1}{2}$ ft. high for 5-mile cor.
 Rough, rolling, broken, 3rd-rate land; good grass; cedar and piñon.

S. $69^{\circ} 50'$ E., 6th mile; va., $12^{\circ} 51'$ E.

- 61.00 Arroya 8 chs. wide, course N. E.; ascend ledge, b'rs N. E. and S. W.
 73.00 Top of sandstone ledge N. E. and S. W.
 80.00 Set a sandstone 14 x 8 x 4 in. half way in the ground, marked 6 M. on N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 6-mile cor.
 Rough, broken, 2nd-rate land; grass.

S. $69^{\circ} 50'$ E., 7th mile; va., $12^{\circ} 51'$ E.

- 46.00 Sandstone ledge.
 55.00 Top of ledge.
 80.00 Set a sandstone 18 x 14 x 8 in. half way in the ground, marked 7 M. on N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 7-mile cor.
 Rough, hilly, 3rd-rate land, with grass.

S. $69^{\circ} 50'$ E., 8th mile; va., $12^{\circ} 51'$ E.

- 80.00 Set a sandstone 18 x 12 x 4 in. half way in the ground, marked 8 M. on N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 8-mile cor.
 Rough, rocky, broken, 3rd-rate land, with grass.

S. $69^{\circ} 50'$ E., 9th mile; va., $11^{\circ} 48'$ E.

- 80.00 Set a sandstone 18 x 12 x 10 in. half way in the ground, marked 9 M. on N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 9-mile cor.
 3rd-rate land; good grass; scrub piñon, and cedar.

S. $69^{\circ} 50'$ E., 10th mile; va., $11^{\circ} 48'$ E.

- 44.00 190 Arroya 1 ch. wide, course N. E.
 80.00 Set a sandstone 12 x 9 x 6 in. half way in the ground, marked 10 M. on N. W. side; raised a mound of stone $2\frac{1}{2}$ ft. high for 10-mile cor.
 3rd-rate, broken land, with grass.

S. $69^{\circ} 50'$ E., 11th mile; va., $11^{\circ} 48'$ E.

- 80.00 Set a sandstone 12 x 8 x 6 in. half way in the ground, marked 11 M. on N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 11-mile cor.
 Rolling, 3rd-rate land; poor grass.
 June 8, 1878.

S. $69^{\circ} 50'$ E., 12 mile; va., $11^{\circ} 48'$ E.

- 80.00 Set a sandstone 18 x 12 x 10 in. half way in the ground, marked 12 M. on N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 12-mile cor.
 Broken, 3rd-rate land; poor grass.

S. $69^{\circ} 50'$ E., 13th mile; va., $11^{\circ} 48'$ E.

- 80.00 Set sandstone 12 x 10 x 6 in. half way in the ground, marked 13 M. in N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 13-mile cor.
 3rd-rate, rolling land; poor grass.
 Cedar and piñon.

S. $69^{\circ} 50'$ E., 14th mile; va., $11^{\circ} 48'$ E.

- 80.00 Set a sandstone 14 x 12 x 8 in. half way in the ground, marked 14 M. in N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 14-mile cor.
 3rd-rate, rolling, broken land; good grass.

S. $69^{\circ} 50'$ E., 15th mile; va., $11^{\circ} 48'$ E.

- 80.00 Set a sandstone 16 x 8 x 8 in. half way in the ground, marked 15 M. on N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 15-mile cor.
 3rd-rate, rolling land; poor grass.

S. $69^{\circ} 50'$ E., 16th mile; va., $12^{\circ} 52'$ E.

- 9.00 Begin ascent of slopes from Tadron Mt., course N. E. & S. W.
 29.00 Top of slopes " " " "
 36.00 Foot of slopes " " " "
 Arroya Salada, 2 chs. wide, course N. E.
 38.00 Commence ascent bluff.
 48.00 Top of bluff b'rs N. E. and S. W.
 55.00 Foot of bluff b'rs N. E. and S. W.
 80.00 Set a sandstone 14 x 10 x 6 in. half way in the ground, marked 16 M. on N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 16-mile cor.
 191 Rolling, 3rd-rate land, with grass.

S. $69^{\circ} 50'$ E., 17th mile; va., $12^{\circ} 52'$ E.

- 4.00 Enter arroya 28 chs. wide, course N. E.
 32.00 Enter low hills, course N. E. and S. W.
 80.00 Set to sandstone 12 x 8 x 7 in. half way in the ground, marked 17 M. on N. W. side, and raised a mound of stone $2\frac{1}{2}$ feet high for 17-mile corner.
 Broken, stony, 3rd-rate land, with grass.

S. $69^{\circ} 50'$ E., 18th mile; va., $12^{\circ} 52'$ E.

- 47.62 Intersect W. boundary of the Cebillette grant 8.71 chs. S. of 6-mile corner.
 80.00 Set a sandstone 10 x 9 x 7 in. half way in the ground, marked 18 M. on N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 18-mile cor.
 Rough, 3rd-rate, broken, and rolling land; good grass.

S. $69^{\circ} 50'$ E., 19th mile; va., $12^{\circ} 52'$ E.

- 80.00 Set a sandstone 16 x 8 x 5 in. half way in the ground, marked 19 M. — N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 19-mile cor.
3rd-rate, rocky land, with sandstone ledges and grass.

S. $69^{\circ} 50'$ E., 20th mile; va., $12^{\circ} 40'$ E.

- 13.00 Arroyo 1 ch. wide, course N.
22.00 Foot of ridge, N. and S.
53.00 Top of ridge, N. and S.
69.00 Foot of ridge, N. & S.
80.00 Set of sandstone 14 x 12 x 8 in. half way in the ground, marked 20 M. on N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 20-mile cor.
Broken, 3rd-rate land; grass.

S. $69^{\circ} 50'$ E., 21st mile; va., $12^{\circ} 40'$ E.

- 80.00 Set of sandstone 18 x 12 x 10 in. half way in the ground, marked 21 M. on N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 21-mile cor.
Low, rolling hills; 3rd-rate land; good grass.

S. $69^{\circ} 50'$ E., 22nd mile; va., $12^{\circ} 40'$ E.

- 80.00 Set of sandstone 14 x 10 x 8 in. half way in the ground, marked 22 M. on N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 22-mile cor.
192 2nd-rate, rolling land; good grass.

S. $69^{\circ} 50'$ E., 23rd mile; va., $12^{\circ} 40'$ E.

- 80.00 Set of sandstone 10 x 9 x 6 in. half way in the ground, marked 23 M. in N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 23-mile cor.
Rough, barren, broken, 3rd-rate land.
June 9, 1878.

S. $69^{\circ} 50'$ E., 24th mile; va., $12^{\circ} 41'$ E.

- 80.00 Set of sandstone 12 x 12 x 6 in. half way in the ground, marked 24 M. in N. W. side, and raised a mound of stone $2\frac{1}{2}$ ft. high for 24-mile cor.
Low, barren hil-s; 3rd-rate land; poor grass.

S. $69^{\circ} 50'$ E., 25 mile; va., $12^{\circ} 39'$ E.

- 80.00 Set of sandstone 10 x 8 x 8 in. half way in the ground, marked 25 M. on N. W. side, and raised a mound of earth $2\frac{1}{2}$ ft. high, with four pits 24 x 18 x 12 in. deep, for 25-mile cor.
3rd-rate sand hills; poor grass.

U. S. DATES VS. THE UNITED STATES.

S. $69^{\circ} 50'$ E., 26th mile; va., $12^{\circ} 39'$ E.

- 80.00 Set of sandstone 14 x 12 x 6 in. half way in the ground, marked 26 M. on N. W. side, and raised a mound of earth $2\frac{1}{2}$ ft. high, with 4 pits 24 x 18 x 12 in. deep, for 26th-mile cor.

3rd-rate, sandy land, sloping east; poor grass.

S. $69^{\circ} 50'$ E., 27 mile; va., $12^{\circ} 39'$ E.

- 64.00 Enter river bottom, course N. and S.

- 80.00 Set of sandstone 18 x 12 x 6 in. half way in the ground, marked 27 M. on N. W. side, and raised a mound of earth $2\frac{1}{2}$ ft. high, with 4 pits 24 x 18 x 12 in. deep, for 27-mile cor.

1st 64 chs. 3rd-rate, sandy land, sloping east, bal. 2nd-rate bottom, all with grass.

S. $69^{\circ} 50'$ E., 28th mile; va., $12^{\circ} 39'$ E.

- 13.00 Road, course N. E. and S. W.

- 17.00 To W. and right bank of Rio Grande river, course S. W.; comes from a little N. of east.
Built a mound of earth.

To avoid river, offset N. $20^{\circ} 10'$ E. 15 chs., thence an offset line S. $69^{\circ} 50'$ E. 63 chs.

- 80.00 Set for wit. 28-mile cor.

- 193 N. $20^{\circ} 10'$ E. 15 chs. of true point 4 cor., a sandstone 20 x 10 x 4 in., half way in the ground, marked 28 M. on N. W. side, and raised a mound of earth $2\frac{1}{2}$ ft. high, with 4 pits 24 x 18 x 12 in. deep.

2nd-rate, rolling land, with grass.

S. $69^{\circ} 50'$ E., 29th mile; va., $12^{\circ} 39'$ E.

Continuing in offset line 15 chs., thence on offset line S. $20^{\circ} 10'$ W. 15 chs.

- 15.00 Regain line on right-hand bank of Rio Grande, course N. W., where set a sandstone of required size, marked on N. W. side half way in the ground, and raised a mound of earth $2\frac{1}{2}$ ft. high, with 4 pits 24 x 18 x 12 in. deep; thence continuing on N. boundary—

- 33.64 To W. side of S. edge of the Alamillo table-land, the N. boundary call of the grant, where set a sandstone 18 x 12 x 12 in. half way in the ground, marked M. C. on its southern side, and raised a mound of stone $2\frac{1}{2}$ ft. high.
2nd-rate land, with grass.

June 10, 1878.

Thence meander along south edge of the Alamillo table-land, the northern boundary call of the grant, which is (as are all the other boundaries call of this grant) universally known.

Courses.	Distances.
S. 49° E.	14.20
S. $9\frac{1}{2}^{\circ}$ E.	15.21 at 3 chs. intersect base line 10.09 ch. E. of initial point.
S. $12\frac{3}{4}^{\circ}$ E.	5.00
N. $86\frac{3}{4}^{\circ}$ E.	8.50
N. $54\frac{1}{4}^{\circ}$ E.	1.00 to N. E. cor. and foot of table-land of grant on W. bank of the Rio Grande river, where set a sandstone. 2nd-rate land; bottom land; good soil and grass. I now return to the S. E. cor. of the grant and meander up the W. bank of Rio Grande, the eastern boundary of the grant; va., $12^{\circ} 23'$ E.

Courses.	Distances.
N. $8\frac{1}{2}^{\circ}$ W.	18.50
N. $19\frac{1}{4}^{\circ}$ W.	10.00
N. $9\frac{1}{2}^{\circ}$ E.	14.00 a few <i>some</i> cottonwoods at this station.
North	15.00
N. $7\frac{3}{4}^{\circ}$ E.	15.00 at 7 chs. mouths San Lorenzo arroyo, 3 chs. wide; at 10 chs. N. boundary Socorro grant, 2.93 chs. E. of M. C. at mouth of San Lorenzo arroyo, & also with S. boundary of La Galla grant.
N. 44° E.	24.00 at 23 chs. enter cottonwoods bear N. and S.
N. $56\frac{1}{2}^{\circ}$ E.	21.00
N. $77\frac{1}{2}^{\circ}$ E.	9.00
S. 84° E.	12.00
N. $86\frac{3}{4}^{\circ}$ E.	24.00
N. $28\frac{1}{4}^{\circ}$ E.	7.00
N. 23° W.	21.00

June 11, 1878.

194 *East Boundary of the Antonio Chavez Arroyo de San Lorenzo Tract.*

Courses.	Distances.
N. $48\frac{1}{4}^{\circ}$ W.	11.00
N. $74\frac{1}{2}^{\circ}$ W.	15.00
N. $79\frac{1}{4}^{\circ}$ W.	14.50
S. 53° W.	9.00
N. $80\frac{3}{4}^{\circ}$ W.	8.50 leave cottonwoods <i>bare</i> E. and W.
S. $88\frac{3}{4}^{\circ}$ W.	13.00
N. $48\frac{1}{4}^{\circ}$ W.	20.00
N. $21\frac{1}{2}^{\circ}$ W.	19.00
N. $3\frac{3}{4}^{\circ}$ E.	12.00
N. $6\frac{1}{2}^{\circ}$ W.	20.00 at 30 chs. acequia 20 chs. wide b'r's S. W.; at 10 chs. Alamillo 10 chs. west.
N. $3\frac{1}{2}^{\circ}$ W.	10.00

N. $10\frac{1}{2}$ ^o W.	5.00 at 2.03 chs. intersect base line two chs. 94 lks. W. of $\frac{1}{4}$ sec. cor. of sec. 35, T. 1 N., R. 1 W.
N. $9\frac{3}{4}$ ^o E.	17.00
N. 26° E.	21.00
N. $37\frac{3}{4}$ ^o E.	6.00 va., 12 20' E.
N. 72° E.	16.00 to point of intersection of the north boundary of the grant with east boundary.
S. $30\frac{1}{2}$ ^o E.	24.00 22.50 chs. intersect base line 9 chs. W. of initial monument.
S. $34\frac{1}{2}$ ^o E.	16.00 9 chs. intersect principal meridian 9 chs. S. of the initial monument.
S. $45\frac{3}{4}$ ^o E.	11.00
S. 81° E.	5.50
N. $38\frac{3}{4}$ ^o E.	9.90 to N. E. corner of grant.

June 12, 1878.

General Description.

This grant lies upon the west side of the Rio del Norte river, in Socorro county, and includes the arroyo of San Lorenzo. The eastern portion upon the river has a small amount of agricultural land with considerable cottonwood timber. The remainder of the grant is upland and generally well adapted to grazing purposes, the springs of La Jinza, San Lorenzo, Ojo de la Plata, Ojo de la Cruz, and Del Causo affording a good supply of water for the stock upon it. The mountains on the western portion have plenty of cedar and pinion with the cottonwoods in the arroyos. I was informed that there are a number of other springs upon the grant in addition to those mentioned, but I did not learn their names or location. It has upon it about 50 or 60 inhabitants, living in the valley of the Rio Grande.

A very large number of sheep and cattle are grazed upon it.

A list of names of the individuals employed to assist in running, measuring, and marking the lines and corners described in the foregoing field-notes of the survey of the Antonio Chavez Arroyo de San Lorenzo private land claim.

Andres Trujillo, chairman.

Jose Dorume, chairman.

Ysidro Madril, flagman.

195 Juan Lucero, axeman.

Luis Martin, axeman.

We hereby certify that we assisted Daniel Sawyer, deputy surveyor, in surveying the exterior boundaries of private land claim the Antonio Chavez Arroyo de San Lorenzo tract, No. 79 in the Territory of New Mexico, and that said claim has been in all respects, to the best of our knowledge and belief, well and faithfully surveyed, and the boundary monuments planted according to the instructions furnished by the surveyor general.

ANDRES TRUJILLO, *Chairman.*

his

JOSE x DORUME, *Chairman.*

mark.

YSIDRO MADRIL, *Flagman.*

his

JUAN LUCERO, *Axeman.*

mark.

his

LUIS x MARTIN, *Axeman.*

mark.

Sworn to and subscribed before me, at Socorro, N. M., this 13th day of June, A. D. 1878.

ANTONIO ABEYTIA, *y.a.
Notary Public.*

I, Daniel Sawyer, United States deputy surveyor, do solemnly swear that in pursuance of a joint contract wherein Daniel Sawyer and William White are joint contractors with Henry N. Atkison, United States surveyor for New Mexico, bearing date the 8th day of August, 1877, I have faithfully and truly, in my own proper person and in strict conformity with the instructions furnished me by said surveyor general, the surveying manual and laws of the United States, surveyed the boundaries lines of private land claim the Antonio Chavez Arroyo de San Lorenzo tract, No. 79, in the Territory of New Mexico; that the description of corners upon said boundary lines are in each instance described true and full descriptions of such corners, and that the foregoing are the true and original field-notes of said surveys.

D. SAWYER.

Subscribed and sworn to before me this 28th day of June, 1878.

HENRY N. ATKISON,
United States Surveyor General.

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, N. M., *August 12, 1878.*

The field-notes of the survey of the Antonio Chavez grant, No. 79, executed by Messrs. Sawyer and White, U. S. deputy surveyors, under their contract No. 76, of August 8, 1877, with the U. S. surveyor general for New Mexico, in the month of June, 1878, having been critically examined and the necessary corrections and explanations made, the said field-notes and the survey they describe, ex-

cept that portion of said survey east of where the north boundary line first intersects the east boundary on the Rio Grande, are approved.

HENRY N. ATKISON,
Surveyor General.

196 DEFENDANT'S EXHIBIT—TESTIMONY OF JUAN FRANCISCO BACA.

Testimony of Juan Francisco Baca, Taken Before Joseph C. Hill, U. S. Commissioner, in Regard to the Ranch or Sitio of Alamillo or Arroyo of San Lorenzo.

My name is Juan Francisco Baca; I live in Limitar, in the county of Socorro, and I was 85 years of age in August, 1873.

I know the sitio of Alamillo or arroyo of San Lorenzo. I have known it since the year 1815 or 1816. It was granted to Antonio Chaves, commonly known as Antonio Chaves. I was at that time alcalde constitutional. The departmental deputation sent me an order to place said Antonio Chaves in possession of the said sitio. This was about the year 1822. I am not very certain as to the date.

The sitio is bounded on the north by the Mesita del Alamillo where it leaves the river, on the east by the Rio del Norte, on the south by the ranch of Pablo Garcia, the line running toward a forked cedar tree about a mile and a half from the river. I do not remember the western boundary. I placed Antonio Chaves in possession in due form of law. He took possession and kept continuous possession of the same until his death. His heirs sold the sitio to Ramon Luna, Rafael Luna, and Anastacio Garcia. They have continuously occupied the said sitio up to the present time.

I am not interested in the said sitio or tract of land in any manner whatsoever.

his
JUAN FRANCISCO BACA.
mark.

Witness:

J. FRANCO. CHAVES.

I, Joseph C. Hill, a United States commissioner for the Territory of New Mexico, do certify that the foregoing evidence was duly taken by me, first having caused the said Juan Francisco Baca to come before me, who, first having duly sworn him to speak the truth, the whole truth, and nothing but the truth, that thereupon he testified in the words set forth in the foregoing testimony signed by him; that said testimony was taken by me at Limitar, in the county of Socorro, on the 1st day of November, in accordance with the request and direction of the surveyor general of the Territory of New Mexico sent to me to that effect.

J. C. HILL,
U. S. Commissioner.

197 DEFENDANT'S EXHIBIT A—TESTIMONY OF FRANCISCO CHAVEZ.

United States Court of Private Land Claims.

MARTIN B. HAYES
vs.
THE UNITED STATES OF AMERICA. } No. 37.

STATE OF COLORADO, }
Court of Arapahoe. }

I, J. Francisco Chaves, being duly sworn as a witness in the said cause, deposes and says that he resides in the county of Valencia, in the Territory of New Mexico; that he is president of the council of the said Territory at the present session of the legislative assembly thereof; that he knew the late Juan Francisco Baca, formerly alcalde of Socorro, the same person whose name is subscribed to the act of juridical possession filed in the office of the surveyor general for the said Territory in the matter of the Antonio Chaves grant, the subject of this action, and whose name is also subscribed to the deposition taken under the direction of the said surveyor general as part of the late proofs on the examination by

the said surveyor general into the question of the existence 198 and validity of the said grant, being the deposition whereof a copy was attached to the report of the said surveyor general (James K. Proudfit) to Congress upon the said private land claim, and that this was an attesting witness to the said deposition.

He further says that the said Juan Francisco Baca died many years ago.

J. FRANCISCO CHAVEZ.

Subscribed and sworn to before me this 14th day of February, A. D. 1893.

[SEAL NOTARY PUBLIC.]

A. H. MARTIN,
Notary Public.

My commission expires 27 Feby, 1894.

199 DEFENDANT'S EXHIBIT A 1, FROM FILES OF SURVEYOR GENERAL.

On this 4th day of October, 1877, before me, Luciano Chaves, a juez de paz in and for the county of Socorro, Territory of New Mexico, personally appeared RUMALDO CHAVEZ, of lawful age, and who, having been by me first duly sworn, deposeth and saith in answer to the following interrogatories:

Question. State your name, age, and place of residence.

Answer. My name is Rumaldo Chavez; my age is seventy-two years, and I reside at Polvadura, in Socorro county, Territory of New Mexico.

Ques. Are you acquainted with the San Lorenzo or Alamillo grant; and, if so, how long have you known it?

Ans. I have known it for forty years or more.

Ques. Do you know the location of the mesita of Alamillo and the little table-lands which forms the north boundary call of said grant? If so, where is it located?

Ans. I know the location of the little table-lands of Alamillo and the mesita. It is situated on the west bank of the Rio Grande. The table-lands run northwest to Ladron mountain and many miles northwest from Ladron mountain.

Ques. Do you know the location of the north line of Pablo Garcia's ranch, which forms the south boundary call of said grant? If so, where is it located?

Ans. I know its location. It is situated on the west bank of the Rio Grande, about half mile south of the mouth of Aroya San Lorenzo. The north line of said ranch runs southwest from a cottonwood tree near the ascequia toward Magdalena mountain, which I have this day helped to establish.

Ques. Do you know the location of the Jara spring, which forms the west boundary call of said grant; and, if so, where is it situated?

200 Ans. Jara spring is west from the Rio Grande about thirty miles, more or less.

Ques. How do you know the location of these natural objects?

Ans. From a personal knowledge and general reputation since I can remember.

Ques. Have you any interest in said grant; and, if so, what interest have you?

Ans. I have no interest in the San Lorenzo grant.

Subscribed in my presence and sworn to before me this 4th day of October, 1877.

RUMALDO CHAVEZ. ^{su}
X
marca.

201 DEFENDANT'S EXHIBIT A 2, FROM FILES OF SURVEYOR GENERAL.

On this 4th day of October, 1877, before me, Luciano Chavez, a juez de paz in and for the county of Socorro, Territory of New Mexico, personally appeared FRANCO CHAVES MARQUEZ, of lawful age, and who, having been by me first duly sworn, deposeth and saith in answer to the following interrogatories:

Question. State your name, age, and place of residence.

Answer. My name is Franco Chaves y Marquez; my age is seventy years, and I reside at Polvodera, in Socorro county, Territory of New Mexico.

Ques. Are you acquainted with the San Lorenzo or Alamillo grant; and, if so, how long have you known it?

Ans. I have known — about forty years.

Ques. Do you know the location of the mesita of Alamillo and

the table-lands which forms the north boundary call of said grant? If so, where is it located?

Ans. I know the location of the mesita of Alamillo and the table-lands. It is situated on the west bank of the Rio Grande. The table-land runs about northwest to Ladron mountain and many miles northwest from Lodran mountain.

Ques. Do you know the location of the north line of Pablo Garcia ranch, which forms the south boundary call of said grant? If so, where is it located?

Ans. I know its location. It is situated on the west bank of the Rio Grande, about half a mile south of the mouth of arroyo of San Lorenzo. The north line of said ranch runs about southwest from a cottonwood tree near the asequia towards Magdalena mountain, which I have this day helped to establish.

Ques. Where is the — which forms the east boundary call of said grant located?

202 Ans. —.

Ques. Do you know the location of the Jara spring, which forms the west boundary call of said grant; and, if so, where is it situated?

Ans. No.

Ques. How do you know the location of these natural objects?

Ans. From a personal knowledge and general reputation since I can remember.

Ques. Have you any interest in said grant? If so, what interest have you?

Ans. I have no interest in the San Lorenzo grant.

FRANCO. CHAVES Y MARQUEZ. ^{su} x
 _{marea.}

Subscribed in my presence and sworn to before me this 4th day of October, 1877.

203 DEFENDANT'S EXHIBIT, FROM FILES OF SURVEYOR GENERAL.

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, NEW MEXICO, November 5th, 1886.

Private Land Claim of Antonio Chavez for the Arroyo de San Lorenzo Tract.

File 158. Reported 79.

This claim was filed August 15, 1873, and was approved by Surveyor General Proudfoot on January 5, 1874. The case is now before me for re-examination. The alleged grant to the said Antonio Chavez by the governor and departmental assembly of New Mexico in the year 1825 and the juridical delivery of possession of the land claimed in April of that year by the proper alcalde are shown by the records of the departmental assembly of this Territory for the

year named, which are now on file among the archives of this office. The certified copies of the grant and proceedings thereunder as taken from the record of the said assembly are duly authenticated, and the testimony of one witness, the alcalde, who delivered the possession, is produced that the grantee took possession of the tract claimed and held until his death, after which his heirs sold it to Ramon Luna, Rafael Luna, and Anastacio Garcia, who thereafter continued to occupy it. This witness, however, makes the date of his juridical delivery three years before the date of the grant.

The petition filed in this office is signed by the said Ramon Luna and Anastacio Garcia for themselves and the heirs of Rafael Luna and all others interested in the grant.

There is no evidence that the grantee complied with the conditions of the royal laws under which all such grants were made. Moreover, the grant was made under the Mexican colonization law of 1824, according to which it could not exceed one square league of land, or a fraction over 4,340 acres, but it is surveyed under 204 the direction of this office for 130,000 acres and its confirmation recommended to this extent.

The facts connected with the survey excite suspicion and distrust as to the entire transaction. The deputy surveyor who undertook the work found it impracticable, owing to the uncertain location of the south boundary and conflicting statements of interested parties respecting the same. They therefore asked the surveyor general for more definite instructions, which appear to have been given in a paper dated May 24, 1878, which was not, however, signed by the surveyor general.

The deputies, nevertheless, proceeded to complete the survey of the tract, guided by the voluntary evidence of five witnesses, four of whom make their statements in answer to printed questions, which are leading, and in one of which cases the name of the witness is not signed to the paper purporting to give his statements. None of these witnesses was cross-examined, and the Government was wholly unrepresented, while the deputy surveyors were thus tempted to make the claim as large as possible with a view to their compensation. I recommend the rejection of this claim by Congress.

The right of the present claimants and those they represent to the land claimed or any portion of it by occupancy and prescription is another question which I am not called on to consider. Copies of this opinion in triplicate are forwarded as required.

GEORGE W. JULIAN,
Surveyor General.

205 (Defendant's Exhibit Map marked p. 205.)

206 And be it farther remembered that on the 25th day of November, A. D. 1893, the same being the 12th day of the November term, the following proceedings were had, to wit:

Argument in the above-entitled cause, continued from yesterday,

was resumed, and before argument of the United States was concluded the court took a recess until two o'clock p. m.

The court resumed its session at two o'clock p. m.; argument concluded and case submitted.

207 And be it further remembered that the said court rendered and afterwards filed in the said office its opinion in the said cause; which opinion is in the words and figures following, to wit:

208 Court of Private Land Claims.

MARTIN B. HAYS }
vs. } No. 37.
THE UNITED STATES. }

John H. Knæbel and James W. Vroom, for plaintiff; Matt. G. Reynolds, U. S. att'y, for defendant.

Mr. Justice MURRAY delivered the opinion of the court.

The petition in this cause is filed under the provisions of sec. 8 of the act of Congress approved March 3d, 1891, which provides that owners of perfect grants of land from Spain or Mexico, within the territory acquired by the United States by the treaty of Guadalupe Hidalgo in 1848, or what is known as the Gadsden purchase in 1853, that is located in the States or Territories named in said act, shall have the right to file their petition in this court to have such perfect title confirmed, but shall not be bound to do so. It is, however, insisted by counsel for the plaintiff, that should the court hold that the grant is not complete and perfect, that it should be confirmed to the extent of eleven leagues under the provisions of sec.

6 of said act, which provides in proper cases, for the confirmation of Spanish or Mexican "grants, warrants, concessions, or surveys which the United States are bound to recognize and confirm by virtue of the treaties of cession of said country, by Mexico to the United States, which at the date of the passage of this act have not been confirmed by act of Congress or otherwise finally decided on by lawful authority and which are not already complete and perfect." * * * * The expediente of title show that on the 3d day of March, 1825, one Antonio Chaves, a Mexican citizen, presented his petition to the provincial deputation, of the province of New Mexico, asking for a grant to a large tract of land for the purpose of pasturage, etc. The boundaries called for in the petition include something over 20,000 acres of land which had been previously granted by the Spanish government to the towns of Sevilleta and Succoro. The petition was referred by the provincial deputation to the (jefe politica) political chief, to ascertain and report, whether or not, the land included in the calls set out in the petition which had been previously granted to said towns should be granted to the petitioner. The political chief in an elaborate report recommended (for various reasons assigned) that all the land asked for in the petition be granted to Chaves. The report was

adopted, and one Juan Francisco Baca an alcalde directed to put the petitioner in juridical possession of the land prayed for. The secretary of the deputation was directed to give said Chaves a certificate of title. He was duly put in possession on the 20th day of April, 1825, and he and those claiming under him have been in possession ever since. The petitioner claims under mean conveyances from the original grantee. The tract of land granted contains about 131,000 acres. The various papers constituting the expediente of title are regular in form, and were properly recorded in the archives of said provincial deputation. The entire proceedings seem to be free from fraud in fact, and if the provincial deputation with the concurrence of the political chief had power to make the grant, it should be confirmed in part, if not in full, and to test that question the court must look to the laws in force in the province of New Mexico at the date of the grant. It will be observed that the grant was made about six months subsequent to the enactment by the congress of Mexico, of the colonization law of the 18th of August, 1824, and more than three years prior to the promulgation of the regulations of November 21st, 1828. The royal order of the cortes of the 4th of January, 1813, made it the duty of the provincials deputations to "devise the most convenient means of making grants, and through the secretaries of state to report the same to the cortes for their recognition and adoption."

Prior to this order the provincial deputations had no authority to dispose of lands belonging to the Crown, and it is doubtful whether this order conferred any such power, but it is not necessary to decide that question, as the Supreme Court of the United States has held that said royal order was repealed on the restoration of the monarchy in 1814. See *United States vs. Clark*, 8 Peters, 454, 455.

On the 23d day of December, 1818, by resolution of the council of the Indies, before a full board at Madrid, (and approved by the King,) it was decreed that all business pertaining to the alienation of the lands in New Spain should belong to the department of the office of the treasury of the Indies at Madrid. Hall Mexican Law page 76, sec. 178.

The royal cedula of October 15th, 1754, authorized the governors in distant provinces of Spain to approve grants to lands belonging to the Crown, but no such power was conferred on the provincial deputations. But all power or authority conferred on the audiencias or governors of New Spain by said royal cedula, which were in conflict with the resolutions of 1818 was repealed by it. It is a general rule, recognized by the civil law, that a posterior, repeals a prior law on the same subject, whether the prior law is referred to or not. Schmidt Civil Law of Spain and Mexico, p. 100.

But we deem it unnecessary to pursue this question further, as this grant cannot be sustained by any law of Spain. In the case of *The United States vs. Vallejo*, 1st Black., 541, the Supreme Court of the United States held: "That the decree of the Spanish cortes of 1813, as well as all other laws of Spain in relation to the disposition of the Crown lands were inapplicable to the state of things, which

existed in Mexico after the revolution of 1820, and could not have continued in force there, unless expressly recognized by the Mexican congress. That the Spanish system of disposing of the public lands was so different from that provided for by the Mexican law of 1824 and regulation of 1828, that they were repugnant and inconsistent, and that the former was repealed by the latter."

The regulations of 1828 was authorized by the following article of the law of 1824, art. 16: "The government in conformity to the principles established in this law will proceed in the colonization of the territories of the Republic." The territories of the Republic were created by the law of July 2d, 1824. The States of the Republic, as well as the government was limited in the amount of land to be given to any one person by art. 12 of said law of 1824 which is as follows: Art. 12. "One single person can only receive a square of land of 5,000 varas, (de regadio,) 4 of superficies for temporal use, and 6 for pasturage," making eleven square leagues, or about 48,000 acres.

211 We think it clear that after the enactment of the colonization law August 18th, 1824, and prior to the promulgation of the regulations of November 21st, 1828, the chief executive of the Republic of Mexico could have made valid grants to the public lands in the territories, or could have conferred the power to do so on any one else, provided such grant or grants had been made in conformity with the provisions of the law of August 18th, 1824. But *non constat* from the evidence in this case, that any such power had been conferred on the provisional deputation or governor when this grant was made.

It is, however, insisted by counsel for the plaintiff, that it is the duty of the court to presume that such authority had been conferred, or that the grant had been subsequently ratified by the government, and many adjudicated cases are cited to sustain this contention, which we think are not applicable to the facts in this case. If the petition, grant, and other proceedings on the part of the provincial deputation and political chief, had shown an intention to carry out the general policy of the colonization law of 1824, the contention of counsel would be entitled to great weight. But on the contrary the records show that neither the petitioner or any one else connected with the entire transaction had any idea whatever of complying with any of the provisions of that law. The grant is for more than twice the quantity of land grantable under the law, and includes land which had been previously granted by the Spanish government. About the same time this grant was made, the evidence shows, that other large tracts of land were granted by the same authority to one single person. The Pablo Moretoyer grant was for more than 600,000 acres; the Preston Beck grant exceeded 700,000 acres, and many others greatly in excess of eleven leagues. These facts being shown, the court certainly would not be warranted in presuming that this grant was made in pursuance of authority conferred by the chief executive of the Republic of Mexico. The officer who put Chaves in possession, certifies that he is a constitutional alcalda, and he must have known of the enactment of the

law of August 18th, 1824, for the constitution was adopted by decree of October 14th, 1824, more than two months subsequent to the passage of the colonization law. The territories of the Republic as we have seen, were created prior to August, 1824. So this, and other large tracts of land, amounting to millions of acres of the public domain was attempted to be donated to individuals, not only, in total disregard of the general policy of the Republic, but in direct violation of the colonization law.

In the case of *The United States vs. Vigil*, 13 Wall. 450, 212 Mr. Justice Davis, speaking for the Supreme Court of the United States, said: "It has been repeatedly decided by this court, that the only law in force in the territories of Mexico for the disposition of the public lands, with the exception of those relating to missions and towns, are the acts of the Mexican congress of 1824, and the regulations of 1828. If the policy of the law were wise, so were the regulations established for the purpose of carrying out its provisions." The law defined the policy of the Government in relation to the colonization of the public lands in the States and Territories and limited the power of the Chief Executive as well as the States, in the quantity of land to be donated to one single individual. The law was as binding on the Chief Executive as to the quantity of land to be given to one single person in the territories—before the promulgation of the regulations of 1828, as it was afterwards. In Vigil's case the grant was made by the departmental assembly in 1846 without the concurrence of the governor. The regulations of 1828 conferred the power on the governor to grant land in the territories not to exceed eleven leagues to one individual, the grants to be approved by the departmental assembly. The court held in that case, that if the grant or cession had been the act of the governor it would still be invalid, because "it would violate the fundamental rule on which the right of donation was placed by the law. The essential element of colonization is wanting, the number of acres granted was enormously in excess of the maximum quantity grantable under the law. The decrees of the cortes of Spain are invoked as authority for this grant, but it is sufficient to say, that they were invoked for a similar purpose in Vallejo's case, and were decided inapplicable to the state of things existing in Mexico after the revolution of 1820."

It is insisted, that if the grant to Chaves did not convey any right to the soil, that it was good as a license during the occupation of the territory by the Mexican government, and that such occupation for 23 years, prior to the ratification of the treaty in 1848, constitute an equity in favor of the petitioner that should be recognized by the court, and that taken in connection with the fact, that the petitioner paid a valuable consideration for the land, and the further fact, that Congress has confirmed similar grants for large tracts of land made by the same authority about the same time, the court would be warranted in confirming this grant as an equitable one to the extent of eleven leagues. To sustain this contention we are referred to the case of *Pollard's Lessee vs. Piles*, 2d Howard, page 603. In that case the land granted to Pollard was situated in the State of

213 Louisiana, and in the territory lying north of the Iberville, and between the Perdido and Mississippi river. This territory was for many years a subject of controversy between the United States and Spain and was not finally settled until the year 1819, when the Floridas were ceded to the United States. The United States claimed that said territory passed by the treaty with France of the 30th of April, 1803. This claim was disputed by Spain, and she refused to deliver the territory, and claimed a right to exercise the powers of government over it.

During the Spanish occupation of said territory, Pollard's grant was made. The Supreme Court of the United States, in the case of Foster and Elam *vs.* Neilson, 2d Peters, 253, and again in Gareca *vs.* Lee, 12th Peters, 515, held that this disputed territory west of the Perdido river passed to the United States by the treaty with France in 1803, and it followed that the Spanish authorities had no power to grant land which belonged to the *the* United States.

Commenting on this condition of things, the court said: "Very many permits to settle on the public domain and cultivate were also granted about the same time, which were in form incipient concessions of the land, and intended by the governor to give title and to receive confirmation afterwards from the King's deputy, so as to perfect them into a complete title. Pollard's was also of this description. Although the United States disavowed that any right to the soil passed by such concession, still they were not disregarded as giving no equity to the claimant; on the contrary, the first act of Congress passed (April 25, 1812) after we got possession of the country, appointed a commission to report to Congress on them in common with all others originating before the treaty of 1803."

Without going further into the history of the grant to Pollard, suffice it to say, that on the 2d day of July, 1836, Congress, in the exercise of sovereign power, passed an act confirming his grant, and the Supreme Court of the United States held that Congress had the right and power to confirm it. The question of the validity of Pollard's grant was not in the case referred to. The question decided in relation to the grant is, that the legal title to the land granted was in the United States when his grant was confirmed, and that therefore the title passed to him by decree of confirmation and patent.

If this cause was pending before Congress the position assumed by counsel might be entitled to favorable consideration. Congress, in its sovereign capacity, has unlimited power over all questions growing out of treaties made by the United States with foreign nations except the power to destroy the right to private property, which is protected by the Constitution of the United States. But this court has only such power and jurisdiction to try and 214 determine the rights of parties claiming grants to land from Spain or Mexico, as was conferred upon it by the act of March 3, 1891. The parts of said act necessary to be examined in this case are the following:

SEC. 6. "That it shall and may be lawful for any person or corporation, or their legal representative, claiming lands within the

limits of the territory derived by the United States from the Republic of Mexico, and now embraced within the Territories of New Mexico, Arizona or Utah, or within the States of Nevada, Colorado or Wyoming by virtue of any such Spanish or Mexican grant, concession, warrant or survey as the United States are bound to recognize and confirm by virtue of the treaties of cession of said country by Mexico to the United States, which, at the date of the passage of this act, have not been confirmed by act of Congress, or otherwise finally decided upon by lawful authority, and which are not already complete and perfect in every such case to present a petition." * * *

SUBDIVISION 1 OF SEC. 13. "No claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land, and one that if not then complete and perfect at the date of the acquisition of the territory by the United States, the claimant would have had a lawful right to make perfect, had the territory not been acquired by the United States, and that the United States are bound, upon principles of public law, or the provisions of the treaty of cession, to respect and permit to become complete and perfect if the same was not at said date already complete and perfect."

SEC. 7. "That all proceedings subsequent to the filing of said petition shall be conducted as near as may be according to the practice of the courts of equity or the United States." * * * "The said court shall have full power and authority to hear and determine all questions arising in cases before it relative to the title to the land, the subject of such case, the extent, location and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title, and the boundaries of the grant or claim presented for adjudication, according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico at the city of Guadalupe Hidalgo on the 2d day of February, 1848, and the treaty concluded between the same powers at the city of Mexico on the 30th of December, 1853, and the laws and ordinances of the government from which it is alledged to have been dirived, and all questions properly arising between the claimants or other parties in the case, and the United States." * * *

215 The claim which the court is authorized to consider must be based on such "a grant, warrant, concession or survey as the United States are bound to recognize and confirm by virtue of treaties or cession by Mexico to the United States, which, at the date of the passage of this act, have not been confirmed or finally decided by lawful authority, and which are not already complete and perfect." * * * It must "appear to be upon a title lawfully and regularly derived from the government of Spain or Mexico or from any State of the Republic of Mexico having lawful authority to make grants of land," and one that if not "complete and perfect at the date of the acquisition of the territory by the United States, the

claimant would have had a lawful right to make perfect had the territory not been acquired by the United States."

In the decision of questions affecting the rights of claimants or the United States, the court must look to the law of nations, the stipulations of the treaties, mentioned in said act, and the laws and ordinances of the government, making the alleged grants. It must be a claim lawful in its inception. The grant, warrant, concession or survey must have been made by one lawfully authorized to make it, and for some sufficient reason the same was not complete and perfect at the date the United States acquired the territory from Mexico, and it must have been made in conformity to the existing laws or ordinances of Spain or Mexico, as the case may be, so that the claimant could have gone into the courts of Mexico and demanded as a matter of right that his title be made complete and perfect, had the territory not been acquired by the United States.

In deciding the questions presented in this case, the court can only look to such rights (if any) as existed at the date of the ratification of the treaty in 1848. We cannot consider any supposed equity growing out of the fact that Congress has confirmed similar grants to other claimants for large tracts of land made by the same authority, or that the claimant has paid out large sums of money for the grant in question upon the faith of such action by Congress. These are proper questions for the consideration of the law-making power of the Government, but not for this court. It is true that section 7 of the act makes it the duty of the court in the preparation of cases for trial to "conform as near as may be to the practice of the courts of equity of the United States."

We understand by this provision of the statute that it was the intention of Congress to give the court large discretion in all matters pertaining to the preparation of causes for trial, so that all parties claiming grants to land from Spain or Mexico might have the

merits of their claims passed upon by the court without being
216 in any way hampered by cast-iron rules of practice. But in passing upon the rights of such claimants on final hearing, we must be governed by the law prescribed by the act creating the court. This court has no equity jurisdiction, except in a proper case to convert an incomplete or imperfect title into a perfect or legal one by degree of confirmation. Tested by these rules it is quite clear that the grant in this case cannot be confirmed under the provisions of sec. 6 of said act. The expediente of title is regular in form, and purports to convey an estate in fee, but inasmuch as the provincial deputation, with the concurrence of the political chief, had no power or authority to make the grant it cannot be sustained under the provisions of sec. 8 of the act. A grant made by one without lawful authority to make it is void in all governments. See Polk's *Lesse-s vs. Wendal*, 9 Cranch, p. 99; same case, 5 Wheaton, p. 303; *United States vs. Workman*, 1 Wall., p. 745; *United States vs. Cary Jones*, *id.* 766; *United States vs. Vigil*, 13 Wall., p. 449. The grant being void, it follows that the petition must be dismissed, and it is so ordered.

Fuller and Stone, JJ., dissented.

217 And be it further remembered that after, to wit, on the 4th day of December, 1893, the same being the 17th day of the November term, the following proceedings were had, to wit:

Comes now the United States, by its attorney, Matt. G. Reynolds, Esq., and moves the court to correct the entry of record on the 13th day of December, 1892, made in said cause; which said entry is a submission of said case to the said court. The above motion was sustained, and it is ordered by the court that the above-mentioned entry made herein be made to show that upon the introduction of proof of the plaintiff said cause was continued for further hearing on behalf of the United States.

218 And be it farther remembered that on the 4th day of December, A. D. 1893, the same being the 17th day of the November term, the following proceedings were had, to wit:

Come now the petitioners, by their attorney, John H. Knaebel, Esq., and the defendant, by Matt. G. Reynolds, Esq., United States attorney, and this cause being submitted at the former day of this court, and the court being fully advised of the premises, it is considered by the court that the petition of the petitioner in the above-entitled cause be, and the same is hereby, dismissed and the grant rejected.

219 And be it further remembered that thereafter, to wit, on the 4th day of December, A. D. 1893, the plaintiff presented to the court and filed in the said cause his petition for a rehearing in the words and figures following, to wit:

220 In the U. S. Court of Private Land Claims.

MARTIN B. HAYES }
vs.
THE UNITED STATES. }

To the honorable the chief justice and associate justices of the United States court of private land claims:

Martin B. Hayes, plaintiff in the above-entitled cause, respectfully prays the said court to grant to him a re-argument and rehearing in the said cause upon the following grounds:

1. If, as assumed by the court in its opinion, the passage of the colonization law of 1824 effected an immediate repeal and abrogation of the former powers of the authorities of New Mexico or of any thereof regarding the alienation of the public domain, still, by the very terms of the colonization law itself, art. 15, it was provided: "The Government, in conformity with the principles established in this law, will proceed to the colonization of the territories of the Republic." Therefore it became at once the right and duty of the supreme executive to take such measures as in his discretion he might see fit to adopt to subject the territorial vacant lands to private ownership. In the execution of this very comprehensive executory authority he was limited by no technicalities or formalities

whatever, and he might select his own agencies, instrumentalities, and forms of procedure.

He might act in special cases only or he might ordain a general rule applicable to all cases whatsoever.

In one case he might act secretly, specially, and even with partiality; in another case he might pursue a contrary policy. He was given an extremely broad and arbitrary power, almost dictatorial in nature, and his only limitations were the fundamental 221 "principles" declared in the colonization law. His power in this respect was almost as broad as the constitutional power of our Congress over the public domain.

This great executive power was never qualified or formalized by any code of procedure until the same executive authority promulgated the regulations of 1828. In those regulations appears for the first time the plan of a definite procedure, in pursuance of which the territorial governor became the first official actor in a territorial grant proceeding and the territorial legislature became his ancillary advisor.

But in the interim between 1824 and 1828 the supreme executive still possessed in full vigor the almost arbitrary power of alienating the territorial public lands.

Manifestly it was most convenient for him to execute this power through local agencies. This is proved by his selection of local agencies in 1828. What disposition of the vacant lands of the territories he made in the interim he would appropriately make through the local authorities—*e. g.*, the territorial deputation or political chief, or both together. The territorial deputation having long exercised the power of alienating the public domain under the Mexican construction of the decree of the cortes of January 4th, 1813, it was very natural for the supreme executive to select that legislative body as his agent in effecting colonization prior to the more complicated system introduced by the regulations of 1828.

Upon the court's theory of the abrogatory effect of the colonization law the territorial deputation and political chief could act in the alienation of the public domain only by the direction or with the assent, original or confirmatory, of the supreme executive. But they did act openly, solemnly, after extreme deliberation, during a period of four years, in course of which they made numerous 222 grants. Since they could on the court's theory act lawfully in such cases only as agents of the supreme executive, what is it our duty to presume? Shall we presume usurpation and fraud or shall we presume the concurring will of the supreme executive?

For a quarter of a century these grants were extant as private estates, conferred and accepted as the donations of the nation, and not a word of disapproval or disavowal on the part of the supreme executive is heard or written.

Is nothing favorable to the grantees to be inferred from this long acquiescence? Is nothing favorable to be inferred from the fact that these grants were respected as valid possession even after the

regulations of 1828 and no governor even pretended to criticize them or disavow them or regrant the same lands?

If the fount of power in respect of such grants was the quasi-dictatorial executive of Mexico, and he, in the choice of his agencies or means of communication, was hedged in by no more restrictions than the deposed King had been when he reigned, why cannot we assume that the streamlets of authority, found in apparent descent from that source, originated there?

Good faith is presumable rather than fraud; legitimacy rather than illegitimacy.

No repugnant statute being in the way, we may reasonably and logically rely, in these circumstances, upon the presumption so frequently invoked to the Supreme Court to sustain the action of Spanish subordinate officials, and also equally invoked by that tribunal in *U. S. v. Peralta*, 19 How., 347, to sustain the action of a Mexican governor, that court saying in the cited case as it had substantially said several times before, "We have frequently decided

that the public acts of public officers, purporting to be exercised in an official capacity and by a public authority, are not presumed to be usurped, but that the legitimate authority had been previously given or subsequently ratified. To adopt a contrary rule would lead to infinite confusion and uncertainty of title."

2. The learned chief justice, being kept from the bench by severe illness, was unable to hear a word of the oral argument, and thus we were deprived of his wise consideration of the numerous points and illustrations adduced by counsel in the course of the long debate, but not preserved in written or printed form.

(Signed)

JNO. H. KNAEBEL,

Attorney for Petitioner.

224 And be it farther remembered that on the 4th day of December, A. D. 1893, the same being the 17th day of the November term, the following proceedings were had, to wit:

The application of plaintiff for rehearing in the above-entitled cause was refused by the court.

225 And be it farther remembered that on the *that on the* 4th day of December, A. D. 1893, the same being the 17th day of the December term, 1893, the following proceedings were had, to wit:

The plaintiff, Martin B. Hayes, prays the court to allow him an appeal to the Supreme Court of the United States from the decision and decree in the above-entitled cause, dismissing the plaintiff's petition therein.

The plaintiff, Martin B. Hayes, hereby gives notice that he intends to appeal and does hereby appeal to the Supreme Court of the United States the decision and decree in the above-entitled cause, dismissing the said plaintiff's petition therein.

The appeal prayed for by the above-named plaintiff, Martin B.

Hayes, in the above-entitled cause is hereby allowed at this November term, A. D. 1893, of the U. S. court of private land claims by the court.

226 And be it further remembered that because, after the taking of the appeal herein and plaintiff's due request for the transcript for transmission to the appellate court, the clerk was delayed by the failure to find in his office after diligent search the abstract of title and mesne conveyances introduced in evidence on the trial, a stipulation on the part of the United States as well as of the plaintiff was made and filed in said clerk's office in words and figures following, to wit:

227

Stipulation.

In the United States Court of Private Land Claims.

MARTIN B. HAYES vs. THE UNITED STATES OF AMERICA.	} No. 37.
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The clerk being unable to find after diligent search the abstract and other exhibits showing deraignment of title in the petitioner to the private claim here in question, it is stipulated, in order to speed the appeal herein, that the United States admits that on the trial the petitioner proved sufficient proprietary interest in the subject-matter of this litigation to enable him to present and prosecute his petition herein.

(Signed)

MATT. G. REYNOLDS,

U. S. Attorney.

(Signed)

JNO. H. KNAEBEL,

Attorney for Martin B. Hayes.

228 And be it further remembered that thereafter, to wit, on the 8th day of October, A. D. 1894, there was duly filed in the said office a stipulation and request on the part of the United States as well as of the plaintiff in the words and figures following, to wit:

229 In the Court of Private Land Claims of the United States.

MARTIN B. HAYES vs. THE UNITED STATES.	} No. 37.
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It is stipulated that upon the hearing of the appeal in this cause such executive and legislative documents regarding the land grant in controversy as have been printed and published by the Government may be cited and referred to without the inclusion thereof in the record to be filed herein, and the clerk of the Supreme Court of the United States is hereby requested to docket the said appeal

and file the record herein, so that the said appeal may stand for argument.

Dated Santa Fé, Oct. 8, 1894.

(Signed)

MATT. G. REYNOLDS,
U. S. Attorney for Appellee.

(Signed)

JNO. H. KNAEBEL,
Attorney for Appellant.

230 UNITED STATES OF AMERICA, } ss:
 Territory of New Mexico, }

I, James H. Reeder, clerk of the United States court of private land claims, do hereby certify that the above and foregoing contains a full, true, and complete transcript of all the papers and record entries of the cause of Martin B. Hayes *versus* The United States as the same now appear on file and of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at the city of Santa Fé, on the 15th day of October, A. D. 1894.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES,
Deputy Clerk.

Endorsed on cover: Case No. 15,720. Court of private land claims. Term No., 477. Martin B. Hayes, appellant, *vs.* The United States. Filed October 31, 1894.



Brief of Knaebel for App't.
IN THE

SUPREME COURT

Filed Jan. 7, 1897.

UNITED STATES.

OCTOBER TERM, 1896.

No. 186.

Office Supreme Court,
FILED.

JAN 7 1897

W. H. MCKENNEY
Clerk

MARTIN B. HAYES,

Appellant,

vs.

THE UNITED STATES,

Appellee.

*Appeal from the
Court of Private
Land Claims.*

STATEMENT AND ARGUMENT OF
APPELLANT.

JNO. H. KNAEBEL,

Counsel for Appellant.



IN THE
SUPREME COURT
OF THE
UNITED STATES.

OCTOBER TERM, 1896.

No. 186.

MARTIN B. HAYES,
Appellant,
vs.
THE UNITED STATES. } *Appeal from the
Court of Private
Land Claims.*

ARGUMENT OF JOHN H. KNAEBEL,
Counsel for the Appellant.

Statement.

The Court of Private Land Claims, sitting at Santa Fé, New Mexico, by its decree, dated the fourth of December, 1893, rejected the private land claim known as the Antonio Chaves grant, as well as by other appellations. (*Transcript*, fol. 218.) The land affected is situate in the county of Socorro, New Mexico. From that decree, the claimant, Martin B. Hayes, has appealed to this court.

The petition to the Land Court for the confirmation of the grant was filed on the twenty-fourth of September, 1892, and, while it correctly sets out by the exhibits which accompany the petition and are made part thereof (*Ib.*, fols. 4, 5, 13, etc.) the original muniments of title as found in the archives pertaining to the provincial government of New Mexico, it contains some historical errors, through the inadvertence of its draftsman, who was misled by similar inadvertence on the part of the surveyor-general appearing in his favorable report. (*Ib.*, fol. 29.) For instance, the grant is referred to, both in that report (*supra*) and the petition (*Ib.*, fol. 2, etc.), as well as on the trial, as having been made by the governor and departmental assembly of New Mexico; whereas, territorial governors and departmental assemblies were not established until after the pretended and usurpatory amendment of the constitution of 1824 by the "constitutional bases" of the third of November, 1835, establishing the "central" government (4 "Mexico," *infra*, 355, 357), and the grant was in fact made, as sufficiently appears from the exhibited archives (*Ib.*, fols. 13 to 24, and fol. 48), by the provincial (or "territorial") deputation of New Mexico, with the concurrence of the political chief.

The Land Court unanimously found our title to be one characterized by good faith and that "the expediente of title is regular in form and purports to convey an estate in fee," but three of the justices were of the opinion that it is invalid, because emanating from the provincial deputation and political chief, and the assent of the supreme executive of Mexico was not shown to their satisfaction, while two of the justices (FULLER and STONE, J. J.) were of opinion that the title is meritorious and ought to be confirmed. (*Ib.*, fol. 216.)

In the opinion (*Ib.*, fol. 208 *et seq.*), the court very fairly summarizes the facts as follows:

"The expediente of title shows that on the third day of March, 1825, one Antonio Chaves, a Mexican citizen, presented his petition to the provincial deputation of the province of New Mexico, asking for a grant to a large tract of land for the purposes of pasturage, etc. The boundaries called for in the petition include something over 20,000 acres of land which had been previously granted by the Spanish government to the towns of Sevilleta and Socorro. The petition was referred by the provincial deputation to the (*jefe político*) political chief, to ascertain and report whether or not the land included in the calls set out in the petition which had been previously granted to said towns should be granted to the petitioner. The political chief, in an elaborate report, recommended (for various reasons assigned) that all the land asked for in the petition be granted to Chaves. The report was adopted, and one Juan Francisco Baca, an alcalde, directed to put the petitioner in juridical possession of the land prayed for. The secretary of the deputation was directed to give said Chaves a certificate of title. He was duly put in possession on the twentieth day of April, 1825, and he and those claiming under him have been in possession of [the land] ever since. The petitioner claims under mesne conveyances from the original grantee. The tract of land granted contains about 131,000 acres. The various papers constituting the expediente of title are regular in form, and were properly recorded in the archives of said provincial deputation. The entire proceedings seem to be free from fraud, in fact, and if the provincial deputation, with the concurrence of the political chief, had power to make the grant, it should be confirmed in part, if not in full,

and to test that question the court must look to the laws in force in the province of New Mexico at the date of the grant. It will be observed that the grant was made about six months subsequent to the enactment by the congress of Mexico of the colonization law of the eighteenth of August, 1824, and more than three years prior to the promulgation of the regulations of November 21, 1828."

Then, with very superficial examination, and with especial reliance on the *dictum* of Mr. Justice NELSON, in the Vallejo case (discussed in our FOURTH POINT, *infra*), the opinion (*Transcript*, fol. 210) rejects the law or royal order under the decree of the Spanish cortes of the fourth of January, 1813, and assumes that the royal cedula of the fifteenth of October, 1754 (*Vide United States vs. Clarke*, 8 Pet., at page 452) was repealed by the resolution of the Council of the Indies of the twenty-third of December, 1818, although that resolution contained no repealing words (*Hall's Mexican Law*, § 188 note, and § 85), and there is not the slightest evidence, or other reason to believe, that such resolution was ever promulgated in New Mexico—the epoch being one in which New Spain was in a turbulent revolution. Thereupon the opinion proceeds to discuss the colonization law of the eighteenth of August, 1824 (*Transcript*, fol. 210), and, without adverting to the non-promulgation of that law in New Mexico, or to its arbitrary and vicious origin (discussed in our FOURTH POINT, *infra*), holds that, prior to the regulations of 1828, it could not operate to confer any authority on the executive and legislative government of that jurisdiction, unless by the intervention, express or implied, of the supreme executive of Mexico. (*Ib.*, fol. 211.) The court, however, in

considering the proposition of counsel, contained in the petition for a rehearing (*Ib.*, fol. 220), that it was the duty of the court, if the colonization law was relevant, to assume that the action of the provincial deputation and political chief had the sanction of the supreme executive, said (*Ib.*, fol. 211) :

“ If the petition, grant and other proceedings on the part of the provincial deputation and political chief had shown an intention to carry out the general policy of the colonization law of 1824, the contention of counsel would be entitled to great weight. But, on the contrary, the records show that neither the petitioner nor any one else connected with the entire transaction had any idea whatever of complying with the provisions of that law.”

The reasoning of the court on this subject is, we believe, sufficiently answered in our FIRST POINT (*infra.*)

The court, alluding to our presentation of the political equities attending the title, erroneously assumed that they were not cognizable by the court under the statute providing for its establishment, and further said (*Ib.*, fol. 213) :

“ If this cause was pending before Congress, the position assumed by counsel might be entitled to favorable consideration.”

(*Vide* THIRD POINT, *infra.*)

Assigning as error the decision of the Land Court rejecting the grant and failing to confirm it as a complete and perfect title, we submit the following grounds upon which we seek a review:

(a) Our title is complete and perfect, because it was competent for the provincial deputation, and

especially for that body and the political chief, to grant it under the laws, usages and customs recognized and operative in New Mexico at its date, and because it is fortified by the law of presumption and the law of prescription.

(*Vide* FOURTH POINT, *infra.*)

(b) The portions of our grant which were carved out of the towns of Socorro and Sevilleta were unquestionably under the granting authority of the provincial deputation; and its action, prompted by the political chief and carried into effect by the proper alcalde, conferred a perfect title, which is strengthened by the law of presumption and the law of prescription.

(*Vide* SECOND POINT, *infra.*)

(c) While we show, in our FOURTH POINT, *infra*, that the colonization law of 1824 was not in force, or even promulgated, in New Mexico at the date of our grant, still, on the assumption that it was applicable, it was the duty of the Land Court to invoke, in aid of the title, the presumption that the grant received the express or acquiescent sanction of the federal government, and also that it received, after the promulgation of the regulations of 1828, the express or acquiescent sanction and re-approval of the political chief and provincial ("territorial") deputation, consistently with those regulations.

(*Vide* FIRST POINT, *infra.*)

(d) The equities which attach to the grant, under the treaty, the law of nations, the laws, usages and customs of Spain and Mexico, and the principles of public law, demand its confirmation.

(*Vide* THIRD POINT, *infra.*)

The court will notice, from the proceedings on the trial, that several months after the provisional submission of the case (*Transcript*, fol. 49), the government was permitted to offer evidence tending to show that "Ojo de la Jara" or Willow Spring, named as the westerly boundary call, is not the "Ojo de la Jara" shown on the United States provisional survey and identified by our proofs—being the spring near "La Jara Peak" laid down on the government map of New Mexico—but that it is a small spring commonly known as "Ojo Ariveche," lying to the east of our valuable pasture lands.

To maintain this afterthought respecting our western boundary, the government introduced several witnesses, namely, José Antonio Baca (*Ib.*, fol. 49), Cayetano Tafoya (*Ib.*, fol. 60), L. M. Brown (*Ib.*, fol. 67), Melquiades Luna (*Ib.*, fol. 101), Ethan W. Eaton (*Ib.*, fol. 113), and Luciano Chaves (*Ib.*, fol. 115), and, in connection with their testimony, the government put in evidence a sketch of the official survey of the grant, with the addition (for the purpose of identification) of the words "Ojo de la Jara" at the point where the "Ojo Ariveche" is supposed to be. (*Transcript*, fol. 205.) A sketch of the government plat, introduced by the claimant, appears *Ib.*, fol. 31. (*Ib.*, fol. 158; also Ex. No. 5, fol. 180.)

These witnesses were produced in person and testified orally, so that the learned justices had abundant opportunity to observe their personal appearance and intelligence, or lack of intelligence, as well as to note their demeanor on the stand and any suspicious features in their testimony; and also to compare them in these particulars and others with the witnesses and testimony produced by the claimant in support of the government survey and in the identification and location of the Ojo de la Jara intended

by the title papers. Our witnesses on this subject were Pablo Padilla (*Ib.*, fol. 120), Nepomueeno Aragon (*Ib.*; fol. 128), Pablo Sanchez (*Ib.*, fol. 138), Jesus Baca, the “*caporal*” or chief shepherd of Antonio Chaves, the grantee (*Ib.*, fol. 149), and Martin B. Hayes (*Ib.*, fol. 158). In addition, we introduced the very important deposition of Hon. Hiram G. Bond (*Ib.*, fol. 89).

A perusal and comparative criticism of all the evidence relating to the situation of the “Ojo de la Jara” mentioned in the granting papers will convince any impartial mind that the Land Court was right in finding, as matter of fact, that this western boundary call is the same spring, situate near “La Jara Peak,” at which the surveyor-general established our northwestern corner. That the Land Court was of opinion that the spring intended was the one so located by the survey is evident from its finding that “the tract of land granted contains about 131,000 acres” (*Ib.*, fol. 209), and from its further declaration (*Ib.*, fol. 211) that “the grant is for more than twice the quantity of land grantable under the law”; that is, more than twenty-two square leagues.

Indeed, there are circumstances of grave suspicion attending the effort of certain witnesses to deprive us of our pastures by pretending that the prominent “Ojo de la Jara” in the contemplation of the grantee, in asking for the grant, and of the official authorities, in making it, was the insignificant water drip called the “Ojo Ariveche” (*Ib.*, fols. 137, 152); the success of which pretension would be to confine us substantially to arid, worthless lands lying east of the “Ojo Ariveche” (*Ib.*, fol. 169).

During the delays to which private land claimants in New Mexico have been subjected, in the assertion of their rights under the treaty, much cupidity has been excited in unscrupulous squatters,

covetous of waters, pastures, woods and fancied mines, and in consequence dangerous adversaries have arisen, who, under pretense of aiding the government to extend the public domain, cherish the intention to appropriate to themselves the property from which, by their aid, the old Mexican inhabitants or their assigns may be excluded. We feel persuaded that, in making its effort to identify the "Ojo Ariveche" with the "Ojo de la Jara," the government has been misled by evil disposed or unscrupulous persons. The court will notice that when Judge Bond, Mr. Charles D. Arms and Mr. Latham L. Higgins were examining the property and investigating its title, with a view to take from the Mexican owners a conveyance under a title bond or contract which the latter had given to the claimant Hayes (*Ib.*, fols. 92, 95), Judge Bond employed the surveyor L. M. Brown to make a survey and topographical map of the grant (*Ib.*, fols. 67, 71, 172), and at that time Brown neither knew nor pretended to know anything against the correctness of the location of the "Ojo de la Jara" on the government survey. (*Ib.*, fols. 71, 72.) The United States field notes show (*Ib.*, page 97) that on the south boundary course of the grant the surveyor ran west, on the twenty-sixth mile, "to a point determined by a blank line to be due south of the east edge of the Jara spring, the western boundary call of the grant, *which is a universally known point*, and is also identified in the evidence herewith submitted." If Mr. Brown had been a man of just and equitable nature, he would naturally have informed Judge Bond and his associates, by whom he had been paid for his work, of any subsequent information tending to show that both the government survey and his own were incorrect as to the northwestern boundary call. After eight years (*Ib.*, fol. 71), during which period

neither he nor anybody else raised any question about the integrity of the location of the northwestern corner, although the survey is indicated on the land office plats and the published government map, and after the trial of this cause had been concluded provisionally for several months, without any objection on this point (*Ib.*, fol. 49), Brown appears as a government special agent "looking up testimony in this case" (*Ib.*, fols. 67, 174), and bestirs himself to find witnesses to prove that, although the "Ojo Ariveche" had been known by that name for nearly fifty years last past, it had in earlier days been called "Ojo de la Jara" or "La Jarita."

The work of Mr. Brown began to appear on the hearing which (after a delay since the thirteenth of December, 1892) took place on the sixteenth of March, 1893. (*Ib.*, fol. 49.) The government then called José Antonio Baez, who testified that before 1848 or thereabouts the Ariveche spring was called La Jara spring, "because there was a great quantity of willow trees there." (*Ib.*, fol. 51.) He added on his direct examination (*Ib.*, fol. 33) that he thought the people who "soldiered" never went west of the mountains, "because the Indians would kill them there;" but, on cross-examination (*Ib.*, fols. 56, 57), he said that he and many others, when he was twenty-five years old, often went to the La Jara spring that is near the Bear mountains "for the Indians." On re-direct, however, he contradicted this statement. (*Ib.*, fol. 58.) Again, on re-cross, he said that it was at La Xinsa spring that a man named Ariveche had been killed. (*Ib.*, fol. 58.) This also he afterwards contradicted. (*Ib.*, fol. 58.) He had nothing "in those days to do with those springs or that country about," except that he went on expeditions. (*Ib.*) This witness, riding in a buggy with the witness Brown, had approached

our witness Pablo Sanchez in a significant way about his knowledge of the springs, etc., and it seems that Cayetano Tafoya also had had a like conversation. (*Ib.*, fols. 144, 145, 146, 174.)

The witness Cayetano Tafoya gave the same kind of hearsay testimony, and he referred to the Ariveche spring as being in the "Cañon del Ojo de la Jara," although there is no "cañon" there, but only a small cañada. (*Ib.*, fol. 61.)

The witness Brown was examined for the government, and then it rested on the sixteenth of March, 1893, and, on a suggestion of surprise, the claimant was permitted to introduce evidence in rebuttal at the next term, at which he produced his testimony on the twenty-third of November, 1893 (*Ib.*, fol. 100). Judge Bond, in his deposition, shows how careful he was in the investigation of the boundary calls at the time when, on the very ground, he was bargaining with one of the owners, Anastacio Garcia, then in actual occupation, for its purchase (*Ib.*, fol. 89). The old Mexican, Garcia, then and there pointed out the Ojo de la Jara, at the northwestern corner of the grant (*Ib.*, fol. 91), and, upon Judge Bond's inquiry, declared that there was no other spring of that name, although when an effort was made to obtain a resurvey, some parties had vainly sought to have it extended to a spring west of the Ojo de la Jara located by the government. (*Ib.*, fol. 93.) It is likely that this suggestion as to a La Jara spring to the west of the true northwestern corner inspired the later suggestion to the disparagement of that correct location. Judge Bond found confirmation in the speech of other old neighbors—among them one Abeytia and one Baca—of the declaration of Garcia regarding the location of La Jara spring. (*Ib.*, fol. 94.) Judge Bond also testified (*Ib.*, fol. 94): "I have on three several occasions visited different parts

of the grant and talked with people living near, and some of them who were living temporarily upon it, and I never heard mentioned the name of any spring called La Jara spring other than the one first indicated by me. Names were given to every spring upon the property, but none of them except the one at the northwest corner of the property was ever called La Jara."

In these circumstances, Anastacio Gareia, being dead at the date of this deposition, his declarations on the ground were competent evidence.

Hunnicutt vs. Peyton, 102 U. S. 333.

On the resumption of the trial at the November term, A. D. 1893, the government, apparently in view of Judge Bond's important deposition, which had been returned in vacation and filed October 26, 1893 (*Ib.*, fol. 96), produced the witnesses Melquiades Luna (*Ib.*, fol. 101), Ethan W. Eaton (*Ib.*, fol. 113), and Luciano Chaves (*Ib.*, fol. 101), for the purpose, among other things, of showing other declarations by Anastacio Garcia, which, however, if they were ever made, seem incompetent according to the rule definitely announced in *Hunnicutt vs. Peyton*, (*supra*).

The witness Melquiades Luna was one of the heirs of Rafael Luna (*Ib.*, fol. 101), a former co-tenant of the grant, and, having sold out, seemed interested in curtailing it, lest it might be prejudicial to a "ranch" on which he had squatted or otherwise temporarily settled. (*Ib.*, fols. 101, 106.) He testified that he had been over the grant "a little" (*Ib.*, fol. 101), and "had heard" the Ariveche called "La Jara" by "several of the old fellows," but had never heard his own father say anything on that subject or on that of the boundaries. (*Ib.*, fol. 102.) To a leading question he answered,

over objection, that in 1883 he had heard Anastacio Garcia say that "the Ariveche was the west line of the grant." Such declarations, if they were ever made, seem not to be admissible under the doctrine of *Hunnicutt vs. Peyton*, 102 U. S. 333, because they were not connected with any pointing out of boundaries or other duty on the part of Garcia. The witness was very indefinite as to the alleged conversation and, besides, he had evidently been "looked up" by Brown. (*Ib.*, fol. 107, *et seq.*) He was also seeking to impeach a title which he had conveyed. (*Ib.*, folio 105.) His description of the Ojo Ariveche is so obscure and uncertain that he makes it apparent that that spring could never have been selected in 1825 as a controlling land mark. (*Ib.*, fols. 110, 111.) He said, "I can't describe it very well, as I just passed by."

The testimony of Ethan W. Eaton (*Ib.*, fol. 113) is all hearsay and incompetent, under the rule to which we have referred, and it is evident that the general conversation in a country store which the witness mentioned related to the same subject discussed between Garcia and Judge Bond, namely, the suggestion made, when a further survey was sought, that the northwestern corner should be extended westerly from the Ojo de la Jara located by the government. (*Ib.*, fols. 92, 93.)

The testimony of Luciano Chaves (*Ib.*, fol. 115) is very incompetent and even open to suspicion. He was the justice of the peace who took the depositions of Romualdo Chaves and Francisco Chaves y Marquez, on the fourth of October, 1877 (*Ib.*, fols. 116, 119; exhibits 3 and 4, fols. 178, 179). He undertakes to give some general gossip, and represent Romualdo Chaves as saying that his father had told him that the Ojo Ariveche was the Ojo de la Jara given in the grant as a boundary. (*Ib.*,

fols. 116, 117.) He did not pretend that either Anastacio Garcia or Mr. Hayes heard this gossip. On the contrary, having given the last of the pretended statement of Romualdo Chaves, the witness proceeded to say (*Ib.*, fol. 117): "At this time Don Anastacio Garcia came into the room where we were and heard the conversation and said to Don Romualdo Chaves, 'Shut up your mouth,' and Mr. Chaves did so." The testimony of Mr. Hayes that he never heard even a suggestion that the Ariveche was the western boundary bears the impress of truth. (*Ib.*, fols. 159, 160, 168.)

It is significant that the justice of the peace Luciano Chaves, on the very day of this pretended gossip, had sworn Romualdo Chaves as a witness and in his own handwriting (*Ib.*, fol. 119) had, after propounding to that witness the question (*Ib.*, fol. 178): "Do you know the location of the Jara spring, which forms the west boundary call of said grant, and if so, where is it situated?" written his answer as follows (*Ib.*, fol. 178): "Jara spring is west from the Rio Grande about thirty miles, more or less," and had, after propounding to the same witness the question (*Ib.*): "How do you know the location of these natural objects?" written his answer as follows (*Ib.*): "From a personal knowledge and general reputation since I can remember."

On the other hand, the testimony which supports the government location, by its survey, of the Ojo de la Jara intended in the grant is clear, convincing and overwhelming.

When Luciano Chaves was recalled, he testified that he had heard the Ariveche called "La Jarita" (*Ib.*, fol. 176); also, that as to the appellation Ariveche, "some call it the Cañada Ariveche and some call it the spring of Ariveche, and that is the difference between us." (*Ib.*, fol. 177.)

It is to be observed that "La Jarita" is a diminutive of "La Jara," and that a spring prominent enough in 1825 to be selected as an important land mark would hardly change its name "Ojo de la Jara" to a mere diminutive, and that "Ojo de la Jara" would never give way in the popular mind to "Cañada de Ariveche." Old landmarks are not subject to such variations of nomenclature among Spanish or Mexican peasants.

The witness Pablo Padilla, fifty-seven years old, understood from boyhood that the Antonio Chaves grant extended to Ojo de la Jara, west of Bear mountain and in the Arroyo de la Jara, and he testified that there were many willows there (*Ib.*, fols. 121, 122, 126). He knew nothing of the Ariveche spring, nor of any willows in or about that cañada—there being only a growth there of palo blanco and sabinal. (*Ib.*, fol. 123.) The witness Nepomuceno Aragon, the uncle of Luciano Chaves, testified (*Ib.*, fol. 129) that it was declared by Anastacio Garcia and the people generally that the grant extended to Ojo de la Jara, northwest of Bear mountain; also that in 1862 "there were a great many willows growing there;" that since 1857 he had known the Cañada Ariveche and the small spring there; that it was the cañada and not the spring that was called Ariveche; that, while plenty of "palo blanco" grew there, no willows did; that in that spring "the quantity of water was very small; to get a drink [one] had to dig with a stick" (*Ib.*, fol. 132); that in its natural condition the spring was useless for watering cattle or sheep (*Ib.*, fol. 137); and that the Navajos made their exits by way of Ojo de la Jara. (*Ib.*, fol. 137.)

The witness Pablo Sanchez, fifty-five years old, identified the Ojo de la Jara, as well as the Arroyo de la Jara and La Jara Peak (*Ib.*, fol. 139), and

described the extraordinary growth of willows at Ojo de la Jara, as the same used to appear. He testified that he knew the Cañada Ariveche in 1854 or 1855; that then the spring there had no name—only the cañada; that the quantity of water was very small, although it might sometimes be sufficient to keep one donkey (*Ib.*, fol. 141); that there were no willows at all there, only palo blanco and lemito; that he had never heard that either the cañada or the spring ever had any name except "Ariveche." (*Ib.*, fols. 142, 143.) The witnesses José Antonio Baea and Cayetano Tafoya seem to have struggled in vain to "refresh" the memory of this witness. (*Ib.*, fols. 144, 145, 146.) The testimony of the witness Jesus Baea (*Ib.*, fol. 149) ought to be conclusive of this question. He was the "caporal," or chief shepherd, of the original grantee, who, as his master, pointed out to him the boundaries of the grant, in order to assist Baea and the other servants in keeping the estate clear from trespassers. It is believed that the testimony of this witness convinced the Land Court of the correctness of the location of Ojo de la Jara by the government survey, and of the falsity of the new-sprung theory of the metamorphosis of Ojo de la Jara into Ojo Ariveche. The old man showed that the latter spring was in the time of Antonio Chaves a mere water drip, never known as Ojo de la Jara, and was named by him and the other shepherd boys "the Chupadero," because "the quantity of water taken from it was very small, and was only sufficient to be taken and put in barrels, and not sufficient to water the burros." (*Ib.*, fol. 132.) He said (*Ib.*, fol. 155): "It was a water can; they called it Chupadero. In those times it did not have the name of Ariveche. We gave it that name—I myself." As to the pretended growth of willows in the Cañada Ariveche, this witness said: "There

never have been any; neither will there be any while there is a world. * * * The willows could not grow there in those times when it would rain, much less grow there now when it is so dry." (*Ib.*, fols. 153, 157.)

Mr. Hayes also testified that there were no willows visible about Cañada Ariveche (*Ib.*, fol. 164), while at Ojo de la Jara the growth of willows is "quite marked" (*Ib.*, fol. 161), and the spring is a good one.

Doubtless some witnesses in referring to the bushes growing in and about the Cañada Ariveche, may have assumed them to be willows because of the generally similar appearance of the foliage.

There stand out certain plain facts which sustain the contention that the true Ojo de la Jara is the spring which forms the northwestern corner of the government survey:

First. The fact established by human experience that an old appellation of a land mark adopted for generations in popular usage does not pass away suddenly or give place readily to a substituted appellation, especially in an ignorant, simple-minded community.

Second. Antonio Chaves was an important citizen of the province, who, at a time when land had little value, might properly ask and confidently expect a large donation of pastures, etc. The land lying east of the Cañada Ariveche is almost worthless, except a small tract on the river which might possibly be irrigable after a serious expenditure. (*Ib.*, fol. 169.) The only valuable pasturage lies west of that cañada. (*Ib.*) In asking for the grant, Antonio Chaves (*Ib.*, fol. 19) laid stress on his need of pasture grounds. Moreover, conscious of his influence and ability, he suggested that from the proposed grant there "will result to the province

in general a great assistance and relief, inasmuch as at this point will be frustrated and prevented the incursions, ambushes and assaults of the enemies of our quietude and peace, who often invade and attack."

The political chief, after a conscientious consideration of the application, made a most favorable report thereon (*Ib.*, fols. 20, 21), and, treating the grant as so serious in its result as to be a means of bringing prosperity to the neighborhood, and especially strong protection against the savages, he said:

"The first and important [reason] is the increase of the population to such a degree that it will afford means to the said settlements of Socorro and Sebilleta by *guarding a portion of the entrances and exits of the savages* who, though at peace, come to rob, as those at war endeavor to harass the same settlements, or those surrounding or near them."

[In the original, *Ib.*, fol. 15: "Tanto para cubrir una parte de las entradas y salidas de los barbaros," etc.]

The "entrances and exits of the savages" were at one point the vicinity of Ojo de la Jara, northwest of Bear mountain, and at another the country near the southwestern corner of the grant, towards Pueblo Springs and Magdalena. When the witness Cayetano Tafoya was asked whether there "were passes and places of ingress and egress by which the savages and Navajos came over to the Rio Grande," he answered, "There were at the Puerta de Magdalena and the Carrizo" (*Ib.*, fol. 63), and he added (*Ib.*, fol. 64) that those places were "in the Magdalena mountains." (*Vide* also *Ib.*, fols. 126, 136, 153.)

The witness Nepomueeno Aragon testified (*Ib.*, fol. 137) that the Navajos, when making their incursions, went out "by way of the Ojo de la Jara."

Finally, our evidence as to the location of our northwestern boundary call, the Ojo de la Jara, near Bear mountain, involves overwhelming proof of consistent common reputation as to the boundaries and of declarations by parties in interest, now deceased, made while pointing out the boundary calls.

Beard's Lessee vs. Talbot, Cooke (Tenn.)
142.

Conn vs. Penn, 1 Pet. C. C., p. 511.

Ellicott vs. Pearl, 10 Pet. 412.

Hunnicutt vs. Peyton, 102 U. S. 333, 362.

Clement vs. Packer, 125 U. S. 309.

Ayers vs. Watson, 137 U. S. 584, 596.

Besides, the land has been practically located by the parties in interest and by common consent, as well as by two official surveys of the government made, not by the procurement of the claimant, but *in adversum*, and in the face of the claimant's protest. (*Transcript*, fols. 159, 166, 167, 168.)

Derlin on Deeds, § 1012.

Rhode Island vs. Massachusetts, 4 How.
591, 639.

Lovejoy vs. Lovett, 124 Mass. 270.

FIRST POINT.

ASSUMING, FOR THE SAKE OF ARGUMENT ONLY, THAT THE COLONIZATION LAW OF 1824 WAS IN FORCE IN NEW MEXICO AT THE DATE OF THE GRANT IN QUESTION (MARCH 3, 1825), AND FURNISHED THE PRINCIPLES BY WHICH THE TITLE IS TO BE TESTED, STILL THE GRANT IS ENTITLED TO CONFIRMATION UNDER THAT LAW, AT LEAST TO THE EXTENT OF ELEVEN SQUARE LEAGUES (MEXICAN), OVER AND ABOVE THE PORTION CARVED OUT OF THE TOWN LANDS OF SOCORRO AND SEVILLETA.

It must be remembered that, since no executive "regulations" on the subject of grants in the territories were formulated until 1828, the case does not come within the limitations of any settled mode of procedure and must depend for its interpretation on more general considerations than those invoked for the construction of territorial grants made after 1828.

The first case wherein this court entered into an elaborate examination of a Mexican title claimed under the colonization law of 1824 is that of *Fremont vs. The United States*, 17 How. 542. In opening the opinion of the court, the chief justice said:

"The court have considered this case with much attention. It is not only important to the claimant and the public, but it is understood that many claims to land in California depend upon the same principles, and will, in effect, be decided by the judgment of the court in this case."

The opinion also contains (page 557) the following important observation, viz:

"It is proper to remark that the laws of these territories under which titles were claimed were never treated by the court as

foreign laws to be decided as a question of fact. It was always held that the court was bound judicially to notice them, as much so as the laws of a state of the Union. In doing so, however, it was undoubtedly often necessary to inquire into official *customs* and *forms* and *usages*. They constitute what may be called the common or *unwritten* law of every civilized country. And when there are no published reports of judicial decisions which show the *received construction of a statute*, and the powers exercised under it by the tribunals or officers of the government, it is often necessary to seek information from other authentic sources, such as the *records of official acts* and the *practice of the different tribunals and public authorities*. And it may sometimes be necessary to seek information from individuals whose official position or pursuits have given them opportunities of acquiring knowledge. But it has always been held that it is for the court to decide what weight is to be given to information obtained from any of these sources. It exercises the same discretion and power, in this respect, which it exercises when it refers to the different reported decisions of state courts, and compares them together, in order to make up an opinion as to the *unwritten law* of the state, or the *construction given to one of its statutes*. With these principles, which have been adjudicated by this court, to guide us, we proceed to examine the validity of the grant to Alvarado, which is now in controversy."

We add one other excerpt from this important opinion (page 561), viz:

"The chief object of these grants was to colonize and settle the vacant lands. The grants were usually made for that purpose, without any other consideration, and without any claim of the grantee on the bounty

or justice of the government. But the public had no interest in forfeiting them even in these cases, unless some other person desired and was ready to occupy them, and thus carry out the policy of extending its settlements. They [the conditions] seem to have been intended to stimulate the grantee to prompt action in settling and colonizing the land by making it open to appropriation by others, in case of his failure to perform them."

After this leading case, numerous others affecting titles originating under Mexican grants, made subsequently to the "regulations of 1828," were brought to the attention of the court, but not a single case has been considered so far as we can discover which relates to any provincial or territorial title granted in the interim between the enactment of the colonization law in 1824 and the promulgation of the regulations of 1828. It was only with reference to grants of land in the territories made after the date of the regulations of 1828 that the court used expressions, now frequently quoted, declaring or intimating that the statutory and regulative provisions for Mexican colonization, being written and express, must be deemed exclusive of all contrary presumptions. Hence, with reference to grants in the territories made after the promulgation of the regulations of 1828, the court saw no occasion to indulge any mere presumption that the supreme executive of the republic, under whose authority the regulations were extant as binding directions to the political chiefs, governors, territorial deputations and departmental assemblies, had exercised any discretion in disregard of those regulations, when it appeared that an alleged grant was in violation of their express terms. Nevertheless, the court has always conceded that, notwithstanding the promulgation of the regulations,

the supreme executive retained a continuing power to suspend their operation in a special case, or to abrogate them altogether.

In *United States vs. Osio*, 23 How., at page 283, the court said with reference to a certain dispatch from the supreme executive to the governor of California purporting to authorize a grant outside of the regulations of 1828:

“Neither side in this controversy disputes the authority of the Mexican president to issue the order contained in the dispatch.”

The dispatch in question expressly required the concurrence of both the governor and the departmental assembly in the making of the proposed grant, and the court said (page 284):

“All we mean to decide in this connection is, that by the true construction of the dispatch, the act of adjudication cannot be held to be valid without the concurrence of the departmental assembly as well as that of the governor. In this respect the provision differs essentially from that contained in the regulations of 1828.” * * *

“Other differences between the regulations of 1828 and the provisions of that dispatch might be pointed out, but we think it unnecessary, as those already mentioned are deemed to be sufficient to show that the decisions of this court, made in *cases arising under these regulations*, have no proper application to the question under consideration.”

On perusal of the colonization law of 1824, we find that it declares certain general rules and principles of colonization, with express reference to the prescribed action of the several state legislatures toward putting them into practical effect within their

respective jurisdictions, but, regarding the application of its provisions to the "territories," it merely ordains, by the eighteenth article, as follows:

"The government [that is, the supreme executive], in conformity with the principles established in this law, will proceed to the colonization of the territories of the republic." (1 White 601, 602.)

At the date of our grant, and for several subsequent years, such provinces as by the constitution of 1824 were styled "territories" were organized provincial communities governed substantially as they had been under the Spanish crown, and living under the old laws, usages and customs as interpreted by the simple-minded villagers and peasants by which each provincial government was usually administered. In New Mexico the legislature was still the "provincial deputation," although official and private persons might occasionally see fit to call it the "territorial deputation." The executive was still the "political chief." The legislature did not become the "departmental assembly," nor the executive the "governor," until the establishment of the "central" form of government under the "*bases constitucionales*," formulated the twenty-third of October, 1835, and promulgated in Mexico on the third of November of the same year. (4 "Méjico," 357.)

In the heat and conflict of the revolution, as well as of the incidental political plots and schemes, the various provincial autonomies went on, with their governmental and official proceedings, under the old momentum, and were not given by the so-called Mexican congresses any directions, rightful or wrongful, to the contrary.

The genesis of these autonomies, from the provincial condition in which they were left by the

abandonment of the mother country to the less independent condition which resulted from specific national legislation or usurpation in the last decade of Mexican sway, involved the law of custom, which always controls a community not embarrassed by specific constitutional or statutory limitations. In these circumstances, the political chief and provincial (or "territorial") deputation of New Mexico, comprehending all the executive, legislative and judicial faculties appropriate to the execution in that province or territory of the colonization law of 1824, were, if it was in force there, the natural instruments of the supreme executive of the republic in the application of its principles to local colonization. If, as assumed by the majority of the court below in its opinion, the passage of the colonization law of 1824 effected by implication an immediate repeal and abrogation of the former powers of the authorities of New Mexico, or of any thereof, in the alienation of the public domain, still, by the very terms of the colonization law itself, art. 16, it was provided:

"The government, in conformity with the principles established in this law, will proceed to the colonization of the territories of the republic."

Therefore, if the colonization law was in force in the "territories," it became at once the right and the duty of the supreme executive (at first a triumvirate, but afterwards the president of the republic) to take such discretionary measures as might seem meet to that official power for the subjection of the territorial vacant lands to private ownership. In the execution of this very comprehensive executory authority, the "executive power" or the substituted "president," was limited by no technicalities or formalities, and they might respectively select their

own agencies, instrumentalities and forms of procedure. They might act in special cases only or they might ordain a general rule applicable to all cases whatever. In one case they might act secretly and even with partiality; in another case they might pursue a contrary policy. They were given an extremely broad and arbitrary power, almost dictatorial in nature, and their only limitations were the fundamental "principles" declared in the colonization law. This great executive power was never qualified or formulated by any code of procedure until the same executive authority (then vested in the president) promulgated the regulations of 1828. In those regulations appears for the first time the plan of a definite procedure, in pursuance of which the territorial political chief became the primary official actor in a territorial grant proceeding and the territorial legislature became his ancillary adviser. But in the interim between 1824 and 1828 the supreme executive, if the colonization law could be deemed operative, still possessed in full vigor the almost arbitrary power of alienating the territorial public lands. Manifestly it was most convenient for the triumvirate or the later president to execute this power through local agencies. This is proved by the selection of local agencies in 1828. What dispositions of the vacant lands of the territories were made in the interim the supreme executive would appropriately make through the local authorities—*e. g.*, the provincial (or "territorial") deputation or political chief, or both together. The deputation having long exercised the power of alienating the public domain under the Mexican construction of the decree of the cortes of the fourth of January, 1813, it was very natural for the supreme executive to select that legislative body as one of the agents

for effecting colonization prior to the more complicated system introduced by the regulations of 1828.

Upon the theory of the abrogatory effect of the colonization law, the deputation and political chief could act in the alienation of the public domain only by the direction or with the assent, original or confirmatory, of the supreme executive. But they did act openly, solemnly, after extreme deliberation, during a period of four years, in course of which they made numerous grants. Since they could on this theory act lawfully in such cases only as agents of the supreme executive, what is it our duty to presume? Shall we presume usurpation and fraud, or shall we presume the concurring will of the supreme executive? For a quarter of a century these grants were extant as private estates, conferred and accepted as public donations, and not a word of disapproval or disavowal on the part of the supreme executive was heard or written. Is nothing favorable to the grantees to be inferred from this long acquiescence? Is nothing favorable to be inferred from the fact that these grants were respected as valid possessions, even after the regulations of 1828, and no political chief or governor ever pretended to criticise them or disavow them or regrant the same lands? If the fount of power in respect of such grants was the quasi-dictatorial executive of Mexico, and that power, in the choice of agencies or means of communication, was hedged in by no more restrictions than the deposed king had been when he reigned, why cannot we assume that the streamlets of authority, found in apparent descent from that source, originated there? Good faith is presumable rather than fraud; legitimacy rather than illegitimacy. No repugnant statute being in the way, we may reasonably and logically rely, in these circumstances, upon the presumption

so frequently invoked by this court to sustain the action of Spanish subordinate officials, and also equally invoked by it in *United States vs. Peralta*, 19 How. page 347, to sustain the action of a Mexican governor; the court saying in the cited case, as it had substantially said several times before:

“ We have frequently decided that the public acts of public officers, purporting to be exercised in an official capacity and by a public authority, are not presumed to be usurped, but that the legitimate authority had been previously given or subsequently ratified. To adopt a contrary rule would lead to infinite confusion and uncertainty of title.”

In *Gonzales vs. Ross*, 120 U. S. 605, the court said (at page 619) in support of the assailed official acts of Soto, a commissioner concerned in the distribution of public lands:

“ A strong circumstance in favor of this conclusion is the fact that Soto's official acts as commissioner in this case were never repudiated by the government; on the contrary, his protocol was received and deposited in the public archives, where it still remains. His official acts, accepted and acquiesced in by the government, must be considered as valid, even if done by him only as a commissioner *de facto*;” and again, at page 622, “All favorable presumptions will be made against the forfeiture of a grant. As before said, it will be presumed, unless the contrary be shown, that a public officer acted in accordance with the law and his instructions. The government accepted Soto's acts, and it does not appear that any attempt was ever made to revoke or annul his proceedings, or to assert a forfeiture for the cause now insisted on.”

There being, then, no unyielding method of procedure laid down on this subject until several years after 1825, we find legitimate occasion for invoking a presumption favorable to the integrity of official action and to the validity of a private possession long and peaceably enjoyed. Since the colonization law commanded the supreme executive to "proceed to the colonization of the territories of the republic," it would be unseemly (if we treat it as an operative law) to assume that the executive was for four years utterly unmindful of the duty to obey; and since this duty existed and during those four years many tracts within the territories were, in harmony therewith, colonized in good faith by Mexican citizens inducted into possession with great formality under the express sanction of the local government purporting to act within its lawful authority, we must presume that these colonizations occurred with the sanction, express or implied, of the supreme executive, through lawful official agents.

In view of the political condition of New Mexico at the time, we may well say, as the court did in reference to a grant by a California governor made in 1820, and further ratified in 1822:

"The presumption arising from the grant itself makes it *prima facie* evidence of the power of the officer making it, and throws the burden of proof on the party denying it."

United States vs. Peralta, 19 How., p. 347.
Curtis' Commentaries, § 304.

While the regulations of 1828, after due promulgation and acceptance in the provinces or territories, might to a certain extent displace the law of presumption as held in *United States vs. Cambuston*, 20

How. 59, at pages 63 and 64, still, in the absence of those regulations, that law as interpreted by the court in the Louisiana and Florida cases, as well as in the California case first above cited, ought to support by presumption the action of the Mexican territorial governments in the granting of lands prior to 1828. Even the Cambuston case (20 How. 63, 64) admits that custom may modify a promulgated statute.

Under a subsequent head of this brief (FOURTH POINT) we show why, on grounds of presumption and prescription, as well as under the principles of public law and political equity, our title should be confirmed to the full extent of our claim, unrestricted by the eleven leagues limitation of the colonization law, and we there present reasons and authorities which, if our grant is at all affected by that law, are equally applicable in support of the very reasonable presumption that the supreme executive sanctioned, either by original consent or subsequent ratification, the official means by which the title was conferred. In this connection, however, we cite, as a cogent authority on the subject of such presumptions, the case of *Fletcher vs. Fuller*, 120 U. S. 534, 545 to 548. There the court held the trial judge to have been in error in refusing to instruct the jury "that the presumption they were authorized to make of a lost deed was not necessarily restricted to what may fairly be supposed to have occurred, but rather to what may have occurred and seems requisite to quiet title in the possessor." The court (*Ib.*, 545) adopted the opinion of Sir William Grant, in *Hillary vs. Waller*, 12 Ves. 239, 252, that such presumptions "do not always proceed on a belief that the thing presumed has actually taken place. Grants are frequently presumed, as Lord Mansfield says, *Elbridge vs. Knott*, Cowp. 215, merely for the purpose and

from a principle of quieting the possession." It added (*Ib.*, 547), "It is sufficient if the evidence leads to the conclusion that the conveyance might have been executed and that its existence would be a solution of the difficulties arising from non-execution." It approved (*Ib.*, 547) the doctrine of presumption of title from long possession as laid down in *Edson vs. Munsell*, 10 Allen, 557, 568, wherein the court said that the presumption "is not founded on a belief that the grant has actually been made in the particular case, but on the general presumption that a man will naturally enjoy what belongs to him, the difficulty of proof after lapse of time, and the policy of not disturbing long continued possessions." The court also cited *Casey's Lessee vs. Inloes*, 1 Gill, 430, 503, wherein it was said that "it is frequently the duty of the jury to find such presumption, as an inference of law, although in their consciences they may disbelieve the actual execution of any such grant," and also *Williams vs. Donell*, 2 Head, 695, 697, wherein it was said that "it will be a sufficient ground for the presumption to show that, by legal possibility, a grant might have issued. And this appearing, it may be assumed, in the absence of circumstances repelling such conclusion, that all that might lawfully have been done to perfect the legal title was in fact done, and in the form prescribed by law." The same rule of presumption was again adopted by the court in most emphatic terms in the case of *United States vs. Chares*, 159 U. S. 452, on appeal from the Court of Private Land Claims; the court saying (*Ib.*, 464):

"It is the general rule of American law that a grant will be presumed upon proof of an adverse, exclusive and uninterrupted possession for twenty years, and that such rule will be applied as a *presumptio*

juris et de jure, wherever, by possibility, a right may be acquired in any manner known to the law;" and adding: "Thus, also, though lapse of time does not, of itself, furnish a conclusive bar to the title of the sovereign, agreeably to the maxim *nullum tempus occurrit regi*; yet, if the adverse claim could have a legal commencement, juries are advised or instructed to presume such commencement, after many years of uninterrupted possession or enjoyment. Accordingly, royal grants have been thus found by the jury, after an indefinitely long continued peaceful enjoyment, accompanied by the usual acts of ownership.

"The principle upon which this doctrine rests is one of general jurisprudence, and is recognized in the Roman Law and the codes founded thereon, Best's Principles of Evidence, § 396, and was, therefore, a feature of the Mexican law at the time of the cession."

Our grant was protected by this presumption of the favorable intervention of the supreme executive (if that authority had any jurisdiction) at the very moment of its origin, and that presumption has grown stronger day by day until after the lapse of upwards of seventy years it has now become unavailable.

In *Mitchel vs. United States*, 9 Pet., at page 761, the court said:

"The length of time which brings a given case within the legal presumption of a grant, charter or license, to validate a right long enjoyed, is not definite, depending on its peculiar circumstances. In this case, we think it might be presumed in less time than where the party rested his claim on prescriptive possession alone. There is every evidence short of the sign manual or

order of the king approving and confirming this grant, and, if that were wanting to secure a right of property to lands which have been held as these have been, the law would presume that it once existed, but was lost in the lapse of time and change of governments. The more especially as, by the laws of Spain, prescription for the period of ten years has the same effect as twenty by the principles of common law."

On the same principle the order of the supreme executive should be presumed in the present case, if, on any theory, the colonization law can be deemed of relevant importance.

In *The Pueblo Case*, 3 Sawy, at pages 556 and 557, it appears that the land commissioners considered an objection that the territorial proceeding for the establishment of the pueblo of San Francisco had never been approved by the supreme government; saying:

"The existence of the pueblo appears to have been uniformly recognized by the public authorities from that time, and its civil officers continued in the exercise of their functions without any question as to their authority or the legality of their acts up to the change of government, a period of nearly twelve years. Such approved, therefore, according to well known legal principles, would be presumed."

On the argument of this cause in the court below, special stress was laid upon the proposition, herein-after discussed, that our grant is entitled to confirmation on general grounds of presumption, prescription and political equity, existing independently of the terms of the colonization law. The first opinion of the court, as pronounced from the bench, but not filed in the cause, led to our motion for a

rehearing (*Transcript*, fol. 220), and it was only after the denial of that motion and the adjournment of the court that the opinion in its present form (*Ib.*, fol. 208) was filed. This opinion undertakes to answer the suggestion, made on the motion, that the concurrence of the supreme executive in the making of the grant, or at least due ratification, ought to be presumed. The court says (*Ib.*, fol. 221) on this subject:

“ If the petition, grant and other proceedings, on the part of the provincial deputation and political chief, had shown an intention to carry out the general policy of the colonization law of 1824, the contention of counsel *would be entitled to great weight*. But, on the contrary, the records show that neither the petitioner nor any one else connected with the entire transaction had any idea whatever of complying with any of the provisions of that law. The grant is for more than twice the quantity of land grantable under the law, and includes land which had been previously granted by the Spanish government,” etc.

It seems plain that the honored justice who wrote this opinion had in mind the subsequent regulations of 1828 when he considered the mere formal parts of the proceedings, such as the petition, grant, etc. In 1825, at the date of the grant, there had been no provision made, either by the statute itself or by executive regulations, respecting any formal procedure whatever in making grants in the territories. The only conditions provided were observance of the “principles” established by that law and observance of the will of the supreme executive manifested by that authority in any manner. The controlling “principles” were the prompt colonization of the public domain, by foreigners and citi-

zens, with certain preferences to the latter class of colonists, and with due regard to the personal merits of applicants. Surely the proceedings of the petitioner, the political chief, the provincial deputation, and the alcalde who delivered the juridical possession were all in full harmony with these "principles" and tended to effectuate the very purpose of the law. It has never heretofore been held important for high public functionaries to recite in their official proceedings the laws under which they act. Such laws form by implication a part of such proceedings, just as the law of contracts enters into all private contracts, although not therein mentioned. It is true that the grant, according to the boundaries asked and granted, and as ascertained and determined by the court, exceeds in extent eleven square Mexican leagues, although counsel for the United States struggled earnestly to show that the area affected was less in quantity than that number of leagues, and it is equally true that a part of the granted lands was carved out of the common pueblo lands of the towns of Socorro and Sevilleta.

But, as demonstrated in our SECOND POINT (*infra*), the provincial or territorial government had a perfect right to grant any part of the common lands of these towns, and, as to the question of alleged excess in the quantity of our grant, it is evident that there appeared nothing on the face of the papers to indicate the actual number of leagues comprehended within the boundaries asked. This observation is equally true of the Pablo Montoya, Preston Beck and other grants alluded to by the court in its opinion. Besides, even up to the time of the Mexican cession, it appeared to be an open question among Mexican officials whether or not the eleven leagues limitation of the colonization law extended to the cases of grants to Mexican citizens;

for we find numerous grants made by territorial governors after 1828, in professed conformity with the colonization law, which were, nevertheless, greatly in excess of eleven square leagues each; as, for instance, the Sangre de Cristo grant (*Tameling vs. U. S. Freehold, etc., Co.*, 93 U. S. 644), the Maxwell grant (*Maxwell Land Grant Case*, 121 U. S. 325; 122 U. S. 365) and numerous others which our Congress has confirmed. Therefore, none of the facts mentioned in this opinion can be taken to indicate an “intention” to disregard the colonization law.

In view of the long continued possession and claim under the grant and the manifest equities attending the title in favor of the claimant, it would be an ungenerous quibble, unworthy of a great nation, to seek at this late day to disavow the grant, because it embraces an excessive area, rather than (in case it be deemed subject to the “principles” of the colonization law) to relegate it to the category of grants of legal quantity included within a larger area, such as were considered in *Van Reynegan vs. Bolton*, 95 U. S. 33, and like cases, and remit the claimant to his selection of eleven square leagues only (over and above the town lands granted) under the doctrine of *United States vs. Vallejo*, 1 Wall. 638, and *United States vs. Armijo*, 5 Wall. 444.

Indeed, it is well settled that a grant may be good for part of the land granted, and bad as to other parts of the same. *Winn vs. Patterson*, 9 Pet. 663; *Patterson vs. Jenks*, 2 Ib. 216; *Mitchel vs. United States*, 9 Ib. 733.

After the promulgation of the regulations of 1828, there can be no doubt that a grant made, as ours was, with the full concurrence of all branches of the territorial government—executive,

legislative and judicial—and in the same formal way precisely, would have been deemed competently made, and would have been an unassailable title (at least to the extent of the town lands and eleven square leagues additional), especially when fortified by a subsequent long continued, uninterrupted and peaceable possession maintained by a Mexican citizen in good faith. It appears that this title, with its attendant possession and claim, and with its record muniments set out at length in the public official journals and archives of the government, open to perusal by all its high functionaries, remained notorious and unchallenged in the very sight of the granting officers of the territory for the period of twenty years after 1828, without a murmur of discontent or objection from any official or citizen. No further argument is needed to show the applicability of a beneficial presumption of regrant or ratification by the proper authorities of New Mexico.

SECOND POINT.

SO MUCH OF THE GRANTED LAND AS WAS CARVED OUT OF THE COMMON LANDS OF THE TOWNS OF SOCORRO AND SEVILLETA WAS WITHIN THE JURISDICTION AND JUS DISPONENDI OF THE TERRITORIAL GOVERNMENT.

It is undisputed that a considerable part of the grant in question was expressly and designelly taken by the territorial government out of the common lands of the settlements or "*poblaciones*" of Socorro and Sevilleta. (*Transcript*, fols. 14, 15, 20 and 21.) It appears that Socorro—"San Miguel del Socorro"—was a municipality under the jurisdiction of an "*ayuntamiento*" or town council, and of an alcalde. (*Ib.*, page 10, fol. 17; page 14, fol. 23.) It may well be inferred that Sevilleta had a similar municipal organization or was attached to the same juris-

diction. In the granting papers it is treated as being on the same footing as Socorro.

There seems to be no occasion to pursue a minute inquiry into the origin of these "poblaciones" or pueblos. As a general thing the small municipalities of Spain, including those in her colonies, grew by a natural social process out of the mere settlement of appropriate tracts of land by Spanish subjects. The gradual introduction into such settlements of prescribed rules of government is shown by Eseriche under the head of "*Ayuntamiento*." Divers royal ordinances and decrees on the subject are found in the compiled laws of the Indies (Hall, Ch. VII), and specific provisions respecting town governments were made by the Spanish constitution of March 18, 1812 (Hall, Ch. VII, § 127), as well as by laws conformable thereto (1 White, 416, 417, 418). By article 309 of this constitution, it was provided that the ayuntamiento, or town council, should be composed of one or more alcaldes, certain elected citizens (councilmen or aldermen) and a corporation attorney, and should be under the presidency of the political chief (Hall, § 127). By the decree of the cortes of the fourth of January, 1813 (Hall, §§ 88, 89, 92), it was provided that all the vacant crown lands and municipal property, except the commons "*necessary*" for the towns, "should be reduced to private property," and the provincial deputations were required to devise means for carrying out the scheme of alienation of the municipal as well as the crown lands contemplated by this decree, and make reports on the subject to the cortes for its further action. (*Ib.*, § 92.) We have no express evidence as to what reports were made or considered by the cortes under these provisions, but, of course, the subsequent customary action of the several provincial

deputations and their successors in authority suggests the presumption that the decree had been duly obeyed and rendered effective, with all proper official sanction.

The court below was wrong in assuming that this decree of the cortes was permanently repealed. (*Transcript*, fol. 210.) Although Ferdinand VII., on his restoration, repealed it by the royal cedula of the eighth of July, 1814 (Hall, § 109), it was revived in 1820 with the constitutional régime of that year. (*Ib.*, § 109.) 6 *Decretos de las Cortes*, 345.

Moreover, under the Spanish and Mexican law, actual promulgation of a Spanish or Mexican decree or statute, in a province or governmental district designed to be affected thereby, was essential before it could become effective there (Eseriche, "Promulgacion," *Gonzales vs. Ross*, 120 U. S. 605, 616), as was, indeed, the rule respecting the British royal orders relating to the American colonies (*Albertson vs. Robeson*, 1 Dallas, 9); and the very fact that the old law continued to be recognized and enforced in a Spanish or Mexican province, territory or colony, after its repeal by the supreme government, is evidence that promulgation of the new law had not yet been made, or else that the former law, if ever repealed, had been revived. *Gonzales vs. Ross*, 120 U. S. 605, 615:

"But the laws of the Mexican states did not take effect in any part of the country until they were promulgated there. * * * Besides, the commissioner was a public officer, having a public duty to perform, and, in the absence of evidence to the contrary, the presumption would be that he acted in accordance with the law as known at the time."

See also *Houston vs. Robertson*, 2 Texas, 1, 28.

Even if the interpretation of their authority under the law by the Mexican officials who constituted the territorial government—executive, legislative and judicial—was mistaken in any respect, that interpretation became sanctified by usage, general and long continued. *Communis error facit jus.* The same principle is seen in our own jurisprudence—erroneous decisions of the highest court of a state entering into the general body of the law of the state and consequently into all contracts made during their extant; so that, notwithstanding a subsequent judicial correction and overruling of such decisions, the contracts made on the faith of their exposition of the law continue of binding force and are protected by the federal constitution. (*Douglass vs. Pike County*, 101 U. S. 677, 686, 687.) “A well known rule of statutory construction remains in force until it shall be abolished by congress.” *Arthur vs. Morrison*, 96 U. S. 108.

Hall declares that “there existed no general law or decree of the sovereign designating the manner of issuing such titles” to specific portions of pueblo lands (Hall, § 135), and—such is the obscurity of the whole subject—he states reasonable grounds for questioning the opinion several times expressed by this court as to the legal limits of pueblo grants (*Ib.*, § 118), and as to the power of alcaldes to allot parcels thereof (*Ib.*, § 138). It seems safe to assume that the high Mexican functionaries concerned in the distribution of territorial lands among resident citizens knew at least as much of the sources of their authority as we can possibly learn at this late day. They must be conceded the same right to blunder in construing the law as we concede to our trial judges and land officers, whose judicial errors, committed within jurisdictional limits, are not deemed usurpations, but, on the contrary, are

permitted to crystallize as the "law of the case," in the absence of an appeal. Doubts as to the nature and extent of official powers are universally resolved by defining and measuring them consistently with the customary practices and usages of the officials concerned in their execution. *United States vs. Johnston*, 124 U. S. 236; *United States vs. Hill*, 120 U. S. 169; *Vide etiam*, 120 U. S. 52; 113 U. S. 568; *Ib.* 727; 111 U. S. 412; 107 U. S. 402; 95 U. S. 760; 23 Wall. 374; 16 Wall. 240; 12 Wall. 177; 21 How. 35; 7 Pet. 1; 12 Wh. 210; 6 Wh. 264; and 1 Cranch 299.

Our courts, in considering titles originating in the grants of parcels of pueblo lands, under the laws, usages and customs of Mexico, have always regarded with respect the action even of a mere alcalde, in assuming the right to dispose of them.

Cohas vs. Raisin, 3 Cal. 444.

When parcels of the vacant lands of a pueblo have been granted to private citizens, whether by the political chief, the alcalde, the provincial deputation, the territorial deputation or the departmental assembly (as these legislative bodies came successively into being), the private titles so conferred have always been respected. It has been assumed that the action of such officials in such cases proceeded under lawful authority. In *Merryman vs. Bourne*, 9 Wall. 593, the court declared that, before the Mexican cession, "the pueblo or village of San Francisco existed, and under the laws of the country was entitled to the territory, within certain prescribed limits, known as pueblo lands. It had also an ayuntamiento or town council, and an alcalde. The alcalde was the chief officer of the pueblo and, as such, had authority to make grants of the pueblo lands. The exercise of this function was subject to

the authority lodged in the ayuntamiento, and to the still higher authority of the departmental governor and assembly."

See also *The Pueblo Case*, 3 Sawy. (C. C.) 553. In *United States vs. Pico*, 5 Wall. 536, it was held that "the disposition of the lands assigned [to a pueblo] was subject at all times to the control of the government of the country." To the same effect is *Grisar vs. McDowell*, 6 Wall. 363.

Our record title shows a recital in the report of the political chief "that to the residents of the said new settlements (*poblaciones*) there remain most ample lands for pastures, fields, uses and transits, so that the land which may be granted to Chaves will cause them not the least scarcity, as on another occasion none occurred to Belem from that granted to Sabinal and even to Sebilleta itself, although it was an appurtenance of the first." (Amended translation of the Spanish in *Transcript*, fol. 15.) This recital indicates the right assumed by the local authorities to dispose of the vacant pueblo lands. It will also be noticed that, when the alcalde of Socorro, under the authority of the political chief and provincial deputation, delivered juridical possession, he was accompanied by two aldermen ("regidores") of the ayuntamiento of Socorro. (*Ib.*, fols. 17 and 23.) Here, then, we have the case of a perfect title duly vested in a Mexican citizen in the spring of 1825. If considered only "*titulo colorado*," or color of title, it was, by reason of the good faith which attended it and the long possession and claim thereunder, the basis of a prescription which matured as early as 1835. Eseriche defines "*Titulo Colorado*" as "El que se funda en alguna apariencia de razon y de justicia,—el que tiene la apariencia de la buena fé pero que no es suficiente para transferir por sí solo la propiedad, sin el auxilio de la posesion y prescripcion."

That so much of our title as is thus derived out of the pueblo lands of Socorro and Sevilleta is wholly outside of the scope of the colonization law of 1824 is plain from the fact that such lands were not part of the vacant public domain, to which the colonization law was limited by its own express terms. (*United States vs. Workman*, 1 Wall., at page 761.)

Indeed, pueblo lands were expressly excepted from its provisions by the second article. (Hall, § 489.)

When, on the twenty-first of November, 1828, three years and upwards after the making of our grant, the Mexican government formulated the familiar regulations of 1828, it expressly recognized the old laws, usages and customs as being of continuing vitality, by the declaration in the thirteenth regulation, that a new town should "follow in its formation, interior government and policy, the rules established by the existing laws for the towns of the republic." (Hall, § 516.)

Finally, the law of presumption and prescription, discussed in our FIRST POINT, *supra*, and our FOURTH POINT, *infra*, affords absolute security to this as well as every other part of our title.

It is to be noted that the eleventh article of the colonization law of 1824, which restricts the area to be granted to any one person in fee (*como propiedad*) to eleven square leagues, is intended to express the limit of granting power *under that law*, but not to deny to any citizen the capacity to acquire eleven square leagues as a colonist, even though, by purchase of private or municipal property not within the scope of the colonization law, he already owned considerable land; nor to debar him from adding to his estate, either contemporaneously with a colonization grant or subsequently, any quantity of purchased private land over and above the eleven leagues sought or granted in colonization.

THIRD POINT.

OUR TITLE PRESENTS, IN ADDITION TO ITS PERFECT LEGAL CHARACTER, EQUITIES WHICH IT IS THE DUTY OF THE COURT TO DECLARE AND ENFORCE UNDER THE TREATY AND THE LAW OF NATIONS.

Although a majority of the justices in the court below seem in the opinion to have taken a narrow view of its jurisdiction and thus failed to appreciate fully the high political faculties with which it is endowed for the just interpretation of Mexican titles, in the light of the treaty stipulations, the laws and ordinances of Spain and Mexico, the law of nations and the "principles of public laws," as specifically enjoined by the statute (26 Stat., page 854, §§ 7, 13); yet this court, inspired with the same spirit of political equity which it manifested in Marshall's time, declares that it does not "perceive in any feature of the act [establishing the land court] an intention on the part of congress to restrict the powers of the court recognized by the previous decisions."

United States vs. Chaves, 159 U. S. 452, 459.

The statute in question is simply an outgrowth of the earlier statutes enacted for the purpose of settling by judicial intervention the numerous private land claims which claimed protection under our treaties with France, Spain and Mexico. Indeed, all these statutes are kindred and, being *quasi in pari materia*, they should be considered together, *reddendo singula singulis*. Sutherland, §§ 282, 283, 284. And, upon the same principle, all parts of the act should be read together, in order to determine the scope of the whole. In this connection, the case of *United States vs. Arredondo*, 6 Pet. 691, is exceedingly pertinent. There we find a most wise and

thorough exposition of the nature of the political duty to which such statutes relate, and also of the true meaning of their terms.

The statutes there considered provided for the jurisdiction of private land claims existing "by virtue of any grant, concession warrant or order of survey," such as the country of their origin might have "perfected into a complete title, under and in conformity to the laws, usages and customs of the government under which the same originated," etc.

In the act now in question, substantially the same phraseology is employed, except that the word "survey" is used without being preceded by the words "order of,"—perhaps because, in the territory derived from Mexico, the technical "order of survey," familiar in the granting procedure of Louisiana, was practically unknown; the "survey" of grants in such territory being almost always the act of juridical possession itself, which went in execution of the granting decree or order.

As the words "grant, concession, warrant or survey" were borrowed substantially from the statutes relating to Louisiana and Florida construed in the Arredondo case, so also were many other important provisions which are common to these early statutes and to the later one now under discussion. For instance, the provisions which invoke for the guidance of the adjudicating tribunal the "stipulations of the treaty," the "laws and ordinances" of the former governments, the "law of nations" and the "principles of public law," together with the requirement that the court concerned should determine "all other questions properly arising between the claimants and the United States." (26 St. 857, § 7; 6 Pet. 709 *et seq.*)

Clearly, in consenting by legislation to devolve on the courts the noble and delicate political duty,

primarily vested in congress, of carrying out the treaty provisions designed for the protection of proprietary interests held by citizens of the former governments in the lands embraced within territorial cessions, congress intended to secure in good faith, by means of the selected instrumentalities, the discharge of that duty in a spirit befitting the honor and dignity of a great nation, and therefore it committed to its judicial delegates the administration, not simply of juridical equities, such as are familiar to a court of chancery, but also of those broader and more generous equities which arise out of the law of nations and the “principles of public law.”

Although, in the earlier statutes (6 Pet. page 713), the courts were expressly directed to have regard to the prior acts of congress in the confirmation of similar claims, with a view apparently to being guided by the opinion of the political department, upon their equitable merits, and no such direction expressly appears in the act in question, still, in the exercise of functions of a political nature, it is only seemly for all delegated tribunals to consider with respect, if not with deference, the political judgment passed on similar subjects by the national legislature when acting thereon directly in construction and performance of the treaty obligations of the government. The court, in the Arredondo case, declared a general doctrine respecting the weight of such legislation as a precedent, when it said what is quite as true in the absence of a legislative direction as in its presence (6 Pet. page 713):

“ When congress have, by confirming the reports of commissioners or other tribunals, sanctioned the rules and principles on which they were founded, it is a legislative affirmation of the construction put by these tribunals on the laws conferring the author-

ity and prescribing the rules by which it should be exercised, or which is, to all intents and purposes, of the same effect in law. It is a legislative ratification of an act done without previous authority, and this subsequent recognition and adoption is of the same force as if done by pre-existing power, and relates back to the act done."

And, in the later case of *Mitchel vs. United States*, 9 Pet. 555, the court also said:

"A confirmation of similar grants made by acts of congress, or by boards of commissioners acting under their authority, are also *powerful evidence* of a lawful exercise of the authority of these officers."

These observations are significant in connection with the fact that congress has several times confirmed grants made before the year 1828 by the provincial or territorial deputation of New Mexico, or by the political chief with its concurrence, such as the Pino or Preston Beck grant (*Stoneroad vs. Stoneroad*, 158 U. S. 240), Report No. 1; the Agua Negra grant, Report No. 12; the Pedro José Perea grant, Report No. 16 (made contemporaneously with our grant), and others confirmed by the act of congress of the twenty-first of June, 1860 (12 Stat., c. 167, p. 71). *Vide* Report No. 321, pages 257 to 268, H. R., 36th Congress, first session; also confirmation of the Pablo Montoya grant, Report No. 41, 15 Stat., p. 342.

Confiding purchasers of unconfirmed titles of like character were naturally induced by these confirmations to regard their titles as coming within the political principle so solemnly acknowledged.

In the Arredondo case (6 Pet., page 714), the court defines "laws and ordinances," as used in these statutes, and declares that usages and customs

existing under the former governments are to be deemed part of their laws and ordinances, saying (*Ib.*, 714, 715):

“There is another source of law in all governments,—usage, custom—which is always presumed to have been adopted with the consent of those who may be affected by it. In England and in the states of this Union which have no written constitution, it is the supreme law, always deemed to have had its origin in an act of a state legislature of competent power to make it valid and binding, or an act of Parliament, which, representing all the inhabitants of the Kingdom, acts with the consent of all, exercises the power of all, and its acts become binding by the authority of all. 2 Co. Inst. 58; Wills, 116. So it is considered in the states and by this court. 3 Dall. 400; 2 Pet. 656, 667.

“A general custom is a general law and forms the law of a contract on the subject matter. Though at variance with its terms, it enters into and controls its stipulations as an act of Parliament or state legislature. * * * The court not only may, but are bound to notice and respect general customs and usages as the law of the land, equally with the written law; and, when clearly proved, they will control the general law. This necessarily follows from its presumed origin: an act of Parliament or a legislative act. Such would be our duty under the second section of the act of 1824, though its usages and customs were not expressly named as a part of the laws or ordinances of Spain. * * * We cannot impute to congress the intention to not only authorize this court, but require it to take jurisdiction of such a case, and to hear and determine such a claim according to the principles of justice, by such a solemn mockery of it as would be evinced by exclud-

ing from our consideration usages and customs which are the law of every government, for no other reason than that, in referring to the laws and ordinances in the second section, congress had not enumerated all the kinds of laws and ordinances by which we should decide whether the claim would be valid if the province had remained under the dominion of Spain. We might as well exclude a royal order because it was not called a law. We should act on the same principle if the words of the second section were less explicit, and according to the rule established in *Henderson v. Pindexter.* See 12 Wheat. 530, 540."

Then follow, in the Arredondo case (6 Pet. 716 *et seq.*), instructive observations on the statutory references to "all other questions properly arising between the claimants and the United States," the testimony of witnesses, since deceased, taken in preliminary investigations of claims, and other evidence mentioned in the statutes, the treaty stipulations, the principles of law, and the law of nations; the court saying (6 Pet. 717):

"From a careful examination of the whole legislation of congress on the subject of the Louisiana and Florida treaties, we cannot entertain a doubt that it has from the beginning been intended that the titles to the lands claimed should be settled by the same rules of construction, law and evidence, in all their newly acquired territory; that they have adopted as the basis of their acts the principle that the law of the province in which the land is situated is the law which gives efficacy to the grant, and by which it is to be tested whether it was property at the time the treaties took effect.

"The United States seem never to have claimed any part of what could be shown by

legal evidence and local law to have been severed from the royal domain before their right attached."

As illustrative of the growth of a Spanish or Mexican usage or custom in derogation of the written law, we cite the case of *Adams vs. Norris*, 23 How. 353, where the court held that it was competent to invoke in support of a will a custom, prevalent in California, while under Mexican dominion, under which wills were executed in a form contrary to that prescribed by the written law. Mexico admitted by custom and implication the continuance in her political and jurisprudential policy of the former Spanish laws, even in respect of the disposition of the public domain, as in the case of the Spanish mining laws. The old laws, usages and customs became part of the law of the land in the same sense that royal orders, acts of Parliament and the common law of England became incorporated by customary adoption into American jurisprudence, notwithstanding the abjuration of allegiance to the English crown. Provinces which secure autonomy through revolution are in a different position in respect of the application of old laws affecting the alienation of public domain from that of conquered or ceded provinces, although it is intimated in the case of Powers' Heirs, 11 How., pages 577, 579, that such old laws apply to even the latter.

In the colony of New York, the colonial legislature at one time took an active part with the governor in legislation regarding the crown lands. (*People vs. Trinity Church*, 22 N. Y., pages 49, 50.) The successors to the same authorities continued to exercise equivalent functions after the declaration of independence. In some of the colonies, the royal grants gave to the grantees proprietary interests in the soil, in others the king merely delegated his

political dominion and *jura regalia*, and in all there were Indian titles, some of which were unextinguished at the formation of our Union. We believe that in no instance did the federal government undertake to repudiate a private title to any of these colonial lands emanating from the state governments by their grants to individuals made after the revolution. Voluntary cessions by certain states to the Union of vast tracts of Indian lands quieted the jealousy and discontent which the smaller and poorer states had manifested on the subject of these important titles; but it cannot be pretended that the great question raised, as between the federal government and the states concerned, was ever resolved, unless it be by the general consensus which supported the state claims to what remained unceded.

In *Fletcher vs. Peck*, 6 Cranch, p. 142, Chief Justice MARSHALL said:

“The question whether the vacant lands within the United States became a joint property, or belonged to the separate states, was a momentous question which at one time threatened to shake the American confederacy to its foundations. This important and dangerous contest has been compromised, and the compromise is not now to be disturbed.”

His associate JOHNSON said in the same case (*Ib.* 146):

“This is a question of much delicacy, and more fitted for a diplomatic or legislative than a judicial inquiry.”

Vide 1 Story Const., §§ 227, 228.

1 Kent Com. 259 *et seq.*; 3 *Ib.* 377, Lecture LI.

Commonwealth vs. Roxbury, 7 Gray, 478
to 482.

Johnson vs. M'Intosh, 8 Wh. 595.

Martin vs. Waddell, 16 Pet. 367.

It is noticeable that no question was ever seriously raised as to the right of the separate states to grant vacant crown lands within their actual immediate political control, such as lay within their settled limits, but that the contest of opinion arose out of the theoretical state claims to vast tracts lying generally in the western wilderness outside of their actual possessions.

In our own time we have seen customs established in the disposition of the public mineral lands that have ultimately grown into the dignity of laws; for this court has said that their "tacit recognition" by our government and the courts made it the duty of the government to protect the mining titles which rested on that foundation; referring to miners' claims as "rights which the government had, by its conduct, recognized and encouraged and was bound to protect before the passage of the act of 1866."

Broder vs. Water Co., 101 U. S., p. 276.

Atchison vs. Peterson, 20 Wall. 507.

Basey vs. Gallagher, *Ib.* 670.

Forbes vs. Gracey, 94 U. S. 762.

Jennison vs. Kirk, 98 U. S. 453.

According to the "principles of public law," a like political duty bound the republic of Mexico, after her central powers had become fixed and generally acknowledged, to respect and protect the possessions and titles held under sanction of the old provincial customs and usages—part of "what may be called the common or unwritten law of every civilized

country." (*Fremont's Case*, 17 How., page 557.) Such property fairly comes within the letter and spirit of articles VIII and X of the Treaty of Guadalupe Hidalgo.

"A law is a rule of action." The principles that lead to social equilibrium and harmony involve deference to law. Whenever we find consistent, harmonious official action in the government of any community, we naturally ascribe that action to an antecedent law by which it has been ordained. When the origin of the supposed law is remote, obscure or otherwise impossible of satisfactory ascertainment, we naturally reason from the effect back to the cause. From the customary official action, long recognized in the community as valid, we fairly assume that that action, suggesting a present rule of official conduct, is the result of some authorized command. The law itself, otherwise unascertainable, is inferred from the common acceptance of official acts as legal. In truth, the "rule" may have been declared by some tyrant or usurper, and may have lacked many of the essentials of a valid law; yet such a rule, accepted by the community, may have gained legitimacy by general adoption and, appearing ultimately as a custom, may have attained the highest authority.

It is merely matter of curious speculation to attempt to trace the origin of customary law. We must simply accept it as a thing consummated, just as we accept the laws of etiquette, whether personal or international.

"Usages long established and followed have to a great extent the efficacy of law in all countries. They control the construction and qualify and limit the force of positive enactments" (*Slidell vs. Grandjean*, 111 U. S. 412); and a great lapse of time is not essential to give jurisprudential weight to

usages or customs (*Strother vs. Lucas*, 12 Pet., pages 436, 437), for, even when they are "comparatively of recent date" (*Ib.*) their serious and general acceptance may give to them a sanction equal to that of mere age.

Following the principles of decision laid down in the Arredondo case, the court said, in *Strother vs. Lucas*, 12 Pet., pages 436, 437:

"This court has also uniformly held that the term 'grant' in a treaty comprehends not only those which are made in form, but also any concession, warrant, order or permission to survey, possess or settle, whether evidenced by writing or parol, or presumed from possession [here citing many cases]; and that in the term 'laws' is included custom and usage, when once settled; though it may be 'comparatively of recent date, and is not one of those to the contrary of which the memory of man runneth not, which contributed so much to make up the common law code, which is so justly venerated' [citing 9 Wheat. 585]. * * * Every country has a common law of usage and custom, both local and general, to which the people, especially those of a conquered or ceded one, cling with more tenacity than to their written laws, and all sovereigns respect them. The people of Kent contended with the conqueror of England till he confirmed their local customs and tenure which continue to this day; and history affords no instance where the people have submitted to their abrogation without a struggle, as was the case in Louisiana, when they found that the laws of France and the custom of Paris were about to be superseded by those of Spain."

Another analogy found in the statutes considered in the Arredondo case and that by which the Court

of Private Land Claims was established is in the legislative classification of grants as either "complete" or "incomplete." 6 Pet. page 718; 26 St. 854, §§ 6, 8, 13. "Incomplete" titles, within the meaning of these statutes, are only such as are merely "inchoate," or "equitable," and do not present, in form, or *by the aid of a beneficial presumption*, a case which indicates a perfect segregation of a specific tract of land from the crown lands or public domain, and its definitive appropriation to private uses, by the consent, express or implied, of the sovereign power. On the other hand, the "complete" titles intended are such as, by reason of their form, or by reason of facts and circumstances which authorize the presumption of a consummate title, require no further aid from the sovereign power to give them forensic standing even against the government.

Beard vs. Federy, 3 Wall. 491.

Still, titles of both kinds are "property" within the protection of the treaty of Guadalupe Hidalgo and of the law of nations.

But they differ in rank and virtue; for incomplete titles depend for their ultimate perfection on the faithful discharge of a high political duty by our government, and complete titles already possess perfection and, when held either by Mexicans or by our own citizens, are under the immediate protection of the constitution, so that their holders may set them up against all aggressions of the government. Titles of the one class are at the mercy of governmental caprice; those of the other class are always entitled to their day in court. Hence, congress can arbitrarily confirm or reject an incomplete title by a mere statute, but cannot question a complete title, except in the court room. Nevertheless, it is true that, in

order to secure a correct delimitation of the public domain, congress may challenge in equity the claimant of a perfect title, establishing for that purpose a judicial jurisdiction analogous to that exercised in chancery in cases of confusion of boundaries and quieting of titles, as was done in California (*Botiller vs. Domingues*, 130 U. S. 238), and is, in a more cautious and merciful way, provided by the Land Court act.

While the case just cited (130 U. S. 238) recognizes the constitutional standing of complete grants and their immunity from impeachment, except in a judicial tribunal, it is only reluctantly accepted by such as believe all valid or colorable possessions to be entitled when assailed to an inquiry by a constitutional jury.

It is thus apparent that our government, dealing with land claimants in the administration of political equities under a treaty of cession, must act *uberrima fide*; for the standard to which it must necessarily conform is even higher than that of gentlemanly honor, and consequently much exalted over what obtains among petty tradesmen and usurers. Its maxim is *Noblesse oblige*. It is a trustee dealing with its beneficiary.

“This court has defined property to be any right, legal or equitable, inceptive, inchoate or perfect, which before the treaty with France in 1803, or with Spain in 1819, had so attached to any piece or tract of land, great or small, as to affect the conscience of the former sovereign ‘with a trust,’ and make him a trustee for an individual, according to the law of nations, of the sovereign himself, the local usage or custom of the district, according to the principles of justice and rules of equity.”

Strother vs. Lucas, 12 Pet., page 436.

Accordingly, this court frowns on sharp and niggardly technicalities in the consideration of the petitions of private land claimants, and denounces the harsh and over-zealous criticism of forensic advocates.

“Nor is it the duty of counsel representing the government to urge microscopic objections against an honest claimant, and urge the forfeiture of his property for some oversight of the commissioners in not requiring proof according to the strict rule of the common law.”

Per GRIER, J., in United States vs. Johnson, 1 Wall., p. 388.

“To these observations, so just and pertinent, we will only add that the United States have never sought by their legislation to evade the obligation devolved upon them by the treaty of Guadalupe Hidalgo to protect the rights of property of the inhabitants of the ceded territory, or discharge it in a narrow and illiberal manner. They have directed their tribunals, in passing upon the rights of the inhabitants, to be governed by the stipulations of the treaty, the law of nations, the laws, usages and customs of the former government, the principles of equity and the decisions of the Supreme court, so far as they are applicable. They have not desired the tribunals to conduct that investigation as if the rights of the inhabitants to the property which they claim depended upon the nicest observance of every legal formality. They have desired to act as a great nation, not seeking, in extending their authority over the ceded country, to enforce forfeitures, but to afford protection and security to all just rights which could have been claimed from the government they superseded.”

Per FIELD, J., in *United States vs. Auguisola*, 1 Wall., at page 358.

Reserving for our next point a submission of further considerations aiding our contention that the Antonio Chaves grant is a perfect and complete title, we insist with confidence that it is unquestionably at least an equitable title. It is evident that, in its adjudication, the court cannot stop with a severe and critical inquiry into the mere formalities which attended its origin, but that the court is in duty bound to consider, together with its original merits, such others as have attached by reason of long continued possession and claim, governmental aequitatem, legal presumptions and other beneficial circumstances. A "grant" or "survey" open to technical objection, when considered alone as a formal proceeding, may have ripened into a good title, either legal or equitable, by the occurrence of facts and conditions which put it under the protection of the treaty, the law of nations, the "principles of public law," and the sovereign benevolence of our government. The protective stipulations of the treaty are merely declaratory—"the avowal of a principle which would have been equally sacred though it had not been inserted in the contract." *Soulard vs. United States*, 4 Pet. 512; 10 Pet. 330; *Lessee of Pollard's Heirs vs. Kibbe*, 14 Pet., page 390. Since, according to the American construction of the treaty, the equities of claimants thereunder are of political, rather than judicial cognizance, although Mexico, in the formulation of the Protocol, vainly sought to have them remitted to the "ordinary tribunals" of our country, the precedents furnished by our political department are, as we have already shown, persuasive on the courts. Upon this ground, we cited to the court below the case of

Pollard's Lessee vs. Files, 2 How., page 602, although that court seems singularly to have mistaken the only point of the citation, namely, to show what, in the estimation of congress, as well as of this court, is an "equity" founded on an actual settlement under an official permission legally defective. It is well known that Spanish officials, while occupying the disputed lands in Louisiana west of the Perdido river, assumed the right to dispose of them as crown lands. The court said (*Ib.*, page 602):

"That Spain had no power to grant the soil, during the time she thus wrongfully held the possession, is settled by the cases cited of *Foster & Elam vs. Neilson*, 2 Pet. 254, and *Garcia vs. Lee*, 12 Pet. 515. But the right necessarily incident to the exercise of jurisdiction over the country and people rendered it proper that permits to settle and improve, by cultivation, or to authorize the erection of establishments for mechanical purposes, should be granted. * * * Very many permits to settle on the public domain and cultivate were also granted about the same time, which were in form incipient concessions of the land, and intended by the governor to give title, and to receive confirmation afterwards from the king's deputy, so as to perfect them into a complete title. Pollard's was also of this description. Although the United States *disavowed* that any right to the soil passed by such concessions, still they were not disregarded as giving no equity to the claimant. On the contrary, the first act of congress passed (of April 25, 1812) after we got possession of the country, appointed a commissioner to report to congress on them in common with all others originating before the treaty of 1803 took effect."

What congress regarded in the subsequent steps for confirmation of these imperfect holdings was

clearly the political equity vested in their possessors. In this connection we refer to the elaborate opinion of Mr. Justice ~~Baldwin~~ McLean in *Lessee of Pollard's Heirs vs. Kibbe*, 14 Pet., at page 500, etc., ~~and also that of Mr. Justice Baldwin, in the same case.~~

It cannot be assumed that congress, after delaying for two score years the giving of any serious attention to the numerous citizens who were craving recognition of their claims under our treaties with Mexico, should at the late day (third of March, 1891) at which the Court of Private Land Claims was created have arbitrarily refused further reecognition of any such equities as are under the contemplation and protection of those treaties, unless they come technically within the limited range of our equitable jurisprudence as formulated in our own domestic economy, without reference to international complications; and should with equal arbitrariness have denounced a statutory bar against all equities of Mexican origin not presented to the Land Court within a few prescribed years. On the contrary, we must credit congress with the utmost good faith in its establishment of the Land Court, originally, and this court, on appeal, as the final arbiters of all private land controversies involving color of title, which are politically determinable under the treaties with Mexico and the relevant law of nations; and therefore, since a statutory bar is attached to such equitable claims not presented to the Land Court, we must assume that it has jurisdiction to consider and decide precisely the same equities as congress recognized in like cases which have been confirmed by statute.

If we search the reports of this court on the subject of private land claims against our government considered under treaties with foreign nations, we find that, although the court has frowned on fraud, trickery, usurpation and other phases of

turpitude, it has always been extremely indulgent to claims originating in grants given and taken in honesty and simple faith, and afterwards strengthened and sanctified by long continued occupation and appropriation. For example, in the case of *United States vs. Alviso*, 23 How. 318, it appeared that José Maria Alviso, brother of the claimant, petitioned the governor of California, in 1838, for the grant of a specific tract of land; that the governor permitted him to occupy the tract pending further proceedings; that the governor ordered a local official (the administrator of the ex-mission of San Francisco, etc.) to make a report on the subject; that a local prefect, to whom this order was exhibited in 1839, gave his sanction to the occupation of the land by the petitioner; that the administrator, in 1840, "reported that the land was unoccupied and was not recognized as private property of the mission or any private person;" and that no further proceedings were had. But it also appeared that the claimant, José Antonio Alviso, received from his brother, the original petitioner, a conveyance of the premises, dated in 1840; "that his occupation commenced in 1840 and has continued for fourteen years; that he has improved and cultivated the land, and that his family have resided on it." Thereupon, the court, in sustaining the title, declared:

"The claimant appears to have been a citizen of the department, and no objection was made or is suggested why he should not have been a colonist of that portion of the public domain he has solicited. No imputation has been made against the integrity of his documentary evidence, and no suspicion exists unfavorable to the *bona fides* of his petition, or the continuity of his possession and claim. He has been recognized as the proprietor of this land since 1840. Un-

der all the circumstances of the case, the court is not willing to disturb the decree in his favor."

It will be seen at once that this case presented a pure question of political equity. There was no concession—only a temporary license to occupy pending the consideration of a petition for a grant, and there was no subsequent official action on that petition. Nevertheless, there was a settlement in good faith by the petitioner's assignee, continued under Mexico for about six years and under our government for about eight years longer. The petitioner was in a situation analogous to that of such settlers in Louisiana as are mentioned in *Pollard's Lessee vs. Files*, 2 How., page 602 (*supra*), and this court recognized as vested in him the same measure of political equity as congress had recognized as vested in them.

It is to be noted that the claimant Alviso, in the California case cited, contemplated the acquisition of a title to the premises and continued to occupy them in that well founded hope. Therefore, he was in a better position than that of a mere licensee permitted to occupy land for a temporary purpose. Naturally, this court has always seen and indicated the clear distinction between these two classes of possessors. Those in the former category were in possession, as it were, by a "survey" in a preliminary proceeding toward acquiring a title, just as an American settler is under the homestead or mining laws; while those in the latter category were in possession as mere tenants at will or for a limited term, without the expectancy or even hopeful pretense of ever obtaining an abiding title. One class held possession and claim; the other, possession only.

The Pino or Preston Beck grant (*Stoneroad vs. Stoneroad*, 158 U. S. 240), before it had been examined by the surveyor-general preliminarily to its consideration by congress, was the subject of an ejectment suit in New Mexico. (*Pino vs. Hatch*, 1 N. M. 125). When the territorial Supreme court passed upon the case, two of the three justices declined to adjudicate the essential character of the title, but agreed that, whatever question might be suggested as to the power of the provincial government to make a definitive grant in 1823, there could be no doubt that it had the power to give to a Mexican citizen the legal right of possession of a specific tract of the vacant public domain; and, therefore, they sustained the right of the grant claimant to maintain ejectment. In the opinion, they cited the case of *Pollard's Lessee vs. Files*, 2 How., page 602, *supra*. The other justice (BROCCUS, J.) discussed the merits of the grant title in a masterly opinion, in which he sustained it as complete and perfect. (1 N. M. 133.)

"The terms of a treaty are to be applied to the state of things then existing in the ceded territory." *Strother vs. Lucas*, 12 Pet., page 438; *United States vs. Clarke*, 8 Pet., page 451. "In the treaty of cession, no exceptions were made, and this court has declared that none can thereafter be made; 8 Pet. 463. The United States must remain content with that which contented them at the transfer, when they assumed the precise position of the king of Spain." *Strother vs. Lucas*, 12 Pet., page 446. These principles, declared under the Spanish treaty, are equally applicable to the Mexican treaty.

FOURTH POINT.

THE ANTONIO CHAVES GRANT BELONGS TO THE CLASS OF COMPLETE TITLES AND SHOULD BE CONFIRMED TO THE FULL EXTENT CLAIMED.

The resolution of the question as to the rank of the title is very important to the claimant, since, if the grant is entitled to recognition as a complete one, it embraces the full area claimed and surveyed (130,138 98-100 acres; *Transcript*, fol. 2; also fol. 209, page 114), while, if it is not complete, it can be confirmed only for eleven square Mexican leagues over and above the parts which were carved out of the pueblos of Socorro and Sevilleta. (SECOND POINT, *supra*.)

Further argument is unnecessary to show that these Socorro and Sevilleta portions came to the grantee by a perfect title, for it cannot be pretended that any additional formalities were necessary to perfect the solemn title conferred by the provincial deputation and political chief, with the concurrence of the alcalde. (SECOND POINT, *supra*.) Besides, the possession and claim continued since 1825 added prescriptive confirmation to the title.

2 White's Land Laws, page 739.

As to the more valuable part which was granted out of the public domain lying to the west of the Socorro and Sevilleta public lands, we submit the following demonstration of the complete and perfect character of the title by which the same was acquired by Antonio Chaves:

The question presented involves a study of the political situation of New Mexico in the spring of 1825, when the grant was made.

From time immemorial New Mexico had been an ultra-marine province of Spain. It had an individual

standing in its relation to the crown quite as distinct as that of any one of our colonies before the declaration of independence. It was sometimes styled in granting decrees and other archives, "the Kingdom of New Mexico," although it was more frequently classed as a "province." (Hall, § 11.) Being a "distant province," its governor, commissioned directly by the king, was substantially a viceroy, disposing freely of the crown lands in the plenitude of his delegated power. His long used authority in this regard—never denied by the King—was confirmed by the royal cedula of 1754, which conceded vice-regal powers in the granting of crown lands to the governors of "distant provinces"; that is, provinces remote from the audiencias, etc. (*United States vs. Clarke*, 8 Pet., page 452.) Even any granting authority which he may have exercised in apparent disregard of this cedula or of any prior or subsequent laws or ordinances of the king must be deemed to have been exercised under secret instructions known to the king and him, although not to any subject. *Vide Strother vs. Lucas*, 12 Pet., page 438, where it is said:

"Where the act done is contrary to the written order of the king, produced at the trial, without any explanation, it shall be presumed that the power has not been exceeded, that the act was done on the motives set out therein, and according to some order known to the king and his officers, though not to his subjects." Citing: 7 Pet. 96; 8 Pet. 447, 451, 454, 456.

Although the cedula of 1754 was, it seems, never repealed (Hall, § 188, note), and New Mexico was never fully under the jurisdiction of the audiencia of Guadalajara (*Ib.*, § 12), and was not included in the ordinance of the fourth of December, 1786,

establishing intendencias (*Ib.*, § 15), by which ordinance the cedula of 1754, so far as consistent, was expressly continued in force (*Ib.*, § 84), yet a certain general jurisdiction, military and civil, exercised by a “comandante general,” was extended over New Mexico by the royal cedulas of 1776 and 1792 (*Ib.*, §§ 17, 18, 85), after which came the law of the cortes of the fourth of January, 1813 (under the constitution of 1812, *infra*), abrogated by Ferdinand VII, on his restoration in 1814, followed by the devolution of the administration of the public lands in “New Spain” on the treasury of the Indies by the resolution of the council of the Indies of the twenty-third of December, 1818, approved by the king (but apparently never promulgated in New Mexico, even if that “distant province” could be deemed a part of “New Spain”), and finally by the restoration in 1820 of the constitutional regime and laws of 1812 and 1813 (*Ib.*, § 109).

Amid the complications and uncertainties attending these specific innovations, coupled with royal cedulas, edicts and secret instructions which may never have been published, we are remitted to the law of presumption, as laid down in the Arredondo case and those that follow and emphasize its doctrines, in order to sustain the integrity of governmental acts of royal governors.

This law of presumption is emphatically re-declared by the court in *United States vs. Peralta*, 19 How. 343:

“The appellants, *on whom the burden of proof is cast* to show want of authority, have produced no evidence, either documentary or historical, that the Spanish officers who usually acted as governors of the distant provinces of California were restricted in their powers, and could not make grants of land. The necessity for the

exercise of such a power by the governors, if the crown desired these distant provinces to be settled, is the greater, because of their distance from the source of power. By the royal order of August 22, 1776, the northern and northwestern provinces of Mexico were formed into a new and distinct organization, called the Internal Provinces of New Spain. This organization included California. It conferred ample powers—civil, military and political—on the commandant general. The archives of the former government also show that as early as 1786 the governors of California had authority from the commandant general to make grants, limiting the number of sitios which should be granted. In 1792 California was annexed to the vice-royalty of Mexico, and so continued till the Spanish authority ceased." [Vide Hall, §§ 17, 18, 186. New Mexico remained after 1792 as one of the provinces comprising "*las provincias internas.*"] "An attempt to trace the obscure history of the various decrees, orders and regulations of the Spanish government on this subject would be tedious and unprofitable. *It is sufficient for the case* that the archives of the Mexican government show that such power has been exercised by the governors under Spain, and *continued to be so exercised under Mexico*, and that such grants, made by the Spanish officers, have been confirmed and held valid by the Mexican authorities. Sola styles himself political and military governor of California. He continued to exercise the same powers after his adhesion to the Mexican government, under the provisions of the plan of Iguala and the twelfth section of the treaty of Cordova. The grant in fee, given by Sola, was after the revolution."

This elucidation of the subject by this court is significant as showing that, so far as it is important

to look to the specific legal source of our title, it can be supported as the valid act of the political chief, even if we are wrong in our opinion that the law of the cortes of the fourth of January, 1813, was one of the sources of the laws, usages and customs of New Mexico in 1825 (*infra*).

New Mexico remained for centuries a remote dependency of an absolute monarch, and, from its isolation, the poverty of its surroundings, the paucity of the people and their simple-minded character, the besetting of savage Indians, with other difficulties attending communication with Mexico and Europe, the control of priests over souls and soldiers over bodies, it became to its inhabitants the world itself, and Spain appeared to them only the mystic seat of a dreaded power. Naturally, the governor, being the direct representative of the king—vested with the power of life and death, and even with full executive, legislative and judicial functions—was regarded as a vice-king, and the province as a kingdom.

While this despotic machinery was in full operation, the Napoleonic wars brought political commotion into the mother country, but, in New Mexico, produced no more effect at first than civil war in Mars. The old laws, customs and usages were still enforced and obeyed, and it could not be otherwise in the absence of due promulgation of authoritative innovations (Escríche, “*Promulgacion*”).

Finally, news was brought to New Mexico and other provinces of a startling change in the government of Spain—the success of a revolution, the reorganization of the government with a cortes and a regency, the adoption of a constitution,—that of the eighteenth of March, 1812, and the promulgation of the land law of the fourth of January, 1813, and other reformatory statutes. This constitution and

this land law were congenial to the provincial character—they were flattering to villagers, shepherds and herdsmen imbued with peculiar reverence for official position. Thus, in a quiet, orderly way, came into being the “political chief,” instead of the former governor, with the “provincial deputation” as a legislature. Even under the ancient despotism the “Ayuntamiento,” or town council, had become known in the provinces (Eseriche, “Ayuntamiento”), and this humbler form of deliberative assembly, composed in part of elected citizens, prepared the way for an elective legislature.

The constitution of 1812 and the decree of the cortes of the twenty-third of May, 1812, recognized the time honored institutions of the ayuntamientos, or town councils, and made specific regulations for their establishment and functions in all the provinces; and, under that constitution and the decree of the cortes of the ninth of October, 1812, the office of “constitutional alcalde” was recognized and regulated (Hall, § 127; 1 White, 416, 419).

It thus appears that the court below fell into an historical error when it assumed (*Transcript*, fol. 211) that, because the alcalde who executed the act of juridical possession styled himself the “constitutional alcalde,” he intended thereby to recognize the Mexican “constitution” of 1824.

By the constitution of 1812 and the laws enacted thereunder, “political chiefs” were established to succeed the “governors” in the government of the provinces, and “provincial deputations” were also established as provincial legislatures, under the presidency of the political chiefs. (Hall, §§ 130, 132.)

In the provinces which were in close communication with Spain, such as Cuba, these provincial legislatures were speedily organized.

The law of the cortes of the fourth of January, 1813 (Hall, § 88 *et seq.*) was naturally very welcome to these constitutional provincial legislatures, because it was intended to vest them with large powers in the disposition of the public domain. By Article 1 it provided:

“1. All the vacant and crown lands and municipal property (propios and arbitrios), with wooded lands and lands not wooded, as well on the peninsula and adjacent islands as in the provinces beyond the seas, except the ejidos necessary for the pueblos, shall be reduced to private property, taking care that in those of propios and arbitrios their annual incomes be supplied by the most opportune means, which, by the proposal of the respective provincial deputations, the cortes shall approve.”

By Article 2 it provided:

“2. In whatever manner the lands shall be distributed, it shall be in fee and with the right of inclosure, in order that their owners may enclose them (without prejudice to the sheep-walks (cañadas), cross-ways, watering places and services), and enjoy them freely and exclusively, and to destine them to the use or cultivation which may best suit them; but they cannot ever entail them, or pass them at any time in mortmain.”

By Article 3 it provided:

“3. In the alienation of said lands, the residents of the pueblos within the limits in which the lands [may] exist, and the common people (comuneros) in the enjoyment of said lands shall be preferred.”

By Article 4 it provided:

"4. The provincial deputations shall propose to the cortes by means of the regency the time and the terms on which it will be the most proper to carry into effect this provision, in their respective provinces, according to the circumstances of the country, and the lands which may be indispensable to preserve for the pueblos, in order that the cortes may resolve what may be most proper to each territory."

It will be observed that the foregoing provisions are generic and far sweeping, and indicate the purpose of confiding to the respective provincial deputations the general right of alienating the public lands, not only arable lands, but also pastoral and mountainous lands, without restriction as to the extent of the grant to any grantee.

There follow three articles (6, 7 and 8) providing, "without prejudice to what is provided," for the reservation of "the half of the vacant and crown lands of the monarchy, excepting the ejidos," for the purpose of lucrative alienation, with a view to the payment of the national debt.

Only the provincial deputation is referred to in the foregoing provisions as the provincial authority concerned in the discretionary administration of the political trust thus intended, and that body was called on by the fourth article to suggest to the cortes the formal procedure appropriate to the execution of the trust reposed.

We are without data sufficient to show what plan of procedure was proposed to the cortes by any provincial deputation under these provisions, but it is to be presumed on familiar principles that the subsequent action of the respective deputations in the

effectuation of this law in their several jurisdictions was in harmony with some duly formulated plan of procedure sanctioned by the cortes, and even afterwards by the restored king, when, in 1820, he re-established the constitutional régime of 1812 (Hall, § 109), as well as later by the general consent of all Mexican officials, and by settled usages and customs.

It seems essential to note that the subsequent articles—9, 10, 11, 12, 13, 15, etc.—relate exclusively to a minor subject, confided to the jurisdiction of the respective ayuntamientos or town councils, namely, that of granting arable tracts or “suertes” to meritorious soldiers and residents of pueblos, which jurisdiction did not extend to the large areas of pasture and woods committed by the first and second articles to the official administration of the provincial deputations.

It is evident from reading the law that only these small concessions of arable land—being, as stated in Article 18, “All the suertes which are conceded in conformity with Articles 9, 10, 12, 13 and 15”—were comprehended within the provisions of Article 17, viz:

“The proceedings for these concessions shall be made also without any costs, by the ayuntamientos, and the provincial deputation shall approve them.”

These regulations for the granting of “suertes” of arable land in the pueblos by their local officers were only declaratory of the old law (Hall, § 138), save that they subjected the action of the town council to the supervision of the provincial deputation (art. 17, *supra*; Hall, § 105), and, from the very terms of these regulations, they operated at once, without waiting for the “proposal” by the provin-

cial deputation mentioned in the fourth article. (Hall, § 92.)

It was these regulations respecting the grant to soldiers and other loyalists of "suertes" of arable town lands that were intended to reward and stimulate loyalty, the twelfth article providing:

"The concessions of these suertes, which shall be called patriotic premiums, shall not be extended *now* to other individuals than those who may serve or have served in the present war, or in the pacification of the present turbulences, in any provinces beyond the sea." (Hall, § 100.)

While Hall says (§ 126) that "the law of the cortes of January, 1813, granting to soldiers the right to claim suertes of land in pueblos vested the power in the council to designate the lands to be given them, and also to execute all the proceedings relative thereto—that is, to make the titles for said lands," it is nevertheless true that the eleventh article of the law provided that "the expediente shall be remitted to the provincial deputation, in order that the latter may approve it and rectify any error."

It thus appears that this law of the fourth of January, 1813, served two purposes, namely, the general purpose of committing the alienation of the public domain in the provinces to the sole discretion of the respective provincial deputations, upon a plan of procedure to be formulated and proposed to the home government by each, and, secondly, the restriction of the ancient power of the ayuntamientos of granting "suertes" of arable town lands, by limiting its exercise, for the time being ("now," art. 12), to the cases of meritorious soldiers.

The grant of power to the provincial deputations was not made dependent on temporary exigencies,

but was the establishment of an abiding legislative authority consonant with the advanced ideas of constitutional government, which, generated in our country and France, were then gradually gaining a foothold in Spain. This innovation, so far from smelling of monarchy, was peculiarly adapted to the conditions of a popular form of government. No wonder that, in the very throes of revolution, the reforms introduced by the constitution of 1812 and the laws enacted for the effectuation of its provisions, and especially this law of the fourth of January, 1813, so far as its fundamental principle was concerned, found great favor in the Spanish provinces, and, once established there, continued in substantial vigor through all succeeding civil commotions until their final evolution into the "constitution" of 1836, and the establishment of governors and departmental assemblies thereunder.

The critical analysis of this law of the fourth of January, 1813, seems very necessary, in view of the *obiter dictum* of Mr. Justice NELSON in the case of *United States vs. Vallejo*, 1 Black, 541, which has, without further reasoning on the subject, been cited time and again in subsequent cases, although neither the Vallejo case, nor any of the others, required any examination of the law of 1813, since they were *all* cases originating in grants made subsequently, not only to the regulations of 1828, for the extension of the colonization law of 1824 over the territories, but also to the reorganization of the former provinces (already grown into actual or *quasi* "states" and "territories") under the "constitution" of 1836, by which the centralized government of Mexico was established, with "departments" and "departmental assemblies,"—and, for the most part, even subsequently to the military "Plan of Taubaya" of the twenty-eighth of September, 1841 (Hall,

§ 670), the usurpatory "Bases Organicas" of the twelfth of June, 1843 (4 "Mexico," 499), and other equally grotesque manifestations of rightless might.

For instance, the two grants claimed by Vallejo were made respectively in 1843 and 1844, and those considered in the other cases following it were made for the most part on the eve of our war with Mexico, and therefore evoked jealous scrutiny.

Few of the considerations presented by us in advocacy of the Antonio Chaves grant had any place in the discussion of these later titles originating after the Mexican Republic had become settled under the "constitution" of 1836 and the later "bases" and projects of so-called government. Even before the Vallejo case, this court had held, in respect of the numerous grants purporting to have been issued on the very eve of the occupation of California by our forces, and bearing brands of fraud, forgery and other turpitude, on the part of Mexican officials and their confederates, that they were to be adjudicated upon the rules and principles furnished by the colonization law of 1824 and the regulations of 1828, and were also to be scrutinized with a jealous eye; for when once the suspicions of a court of equity are aroused in a litigation it becomes as indignant as outraged honor. *Vide* the distrust of one of Pio Pico's alleged grants expressed by the court, in *United States vs. Cambuston*, 20 How. 59, 64, as well as in several other cases.

Mr. Justice NELSON, referring in the Vallejo case (1 Black, page 553), to one of the grants which purported to be, not "in colonization," but a sale of public domain, made by the governor of California in 1844, said:

"The ground taken to uphold this grant concedes that no other power has been conferred upon the governor by any

express act of the Mexican congress; but it is insisted that the law of 1824, and regulations of 1828, did not repeal the power, if it previously existed, to make a grant of the public lands by sale for a pecuniary consideration; and the decree of the Spanish cortes of January, 1813, is referred to as confirming that authority. But anyone looking into this law will see that it provides for a very different system of disposing of these lands from that found in the Mexican law of 1824 and the regulations of 1828, and, unless specifically recognized or excepted, would necessarily be repealed as repugnant and inconsistent with the system adopted."

So far it is not material for us to question this opinion, although it was very seriously challenged in the dissenting opinions of Mr. Justice GRIER (1 Black, page 555) and Mr. Justice WAYNE (*Ib.* 558); for, as we shall show, the colonization law of 1824 was not in force in New Mexico in 1825, and probably not until some year later than 1828. The court thus holding that, after the promulgation of the regulations of 1828, the colonization law of 1824, with those regulations, became the exclusive law, repealing, by implication, all inconsistent prior laws, customs and usages, it was, of course, unnecessary to go into the question of the validity or scope of such prior laws in respect of titles (not before the court) originating before the year 1828. Nevertheless, Mr. Justice NELSON, *argumenti gratia*, proceeded to give his view of the law of the fourth of January, 1813, and, erroneously assuming that its provisions, relating to the grants of "suertes" of arable town lands by the municipal authorities of the towns, are its only provisions for the alienation of the public domain, and ignoring the very gist of the law — the provisions which cover the whole subject of crown

lands in the provinces, and look to their free alienation by the provincial deputations,—he says:

“After providing for the reduction of the public lands to private ownership, in the way and with the qualifications stated, the act declares that half of the vacant and crown lands of the monarchy shall be reserved as a security for the payment of the national debt, and of those to whom the nation is indebted, who are inhabitants of villages to which the lands are adjacent, and provision is made for the distribution of them to the public creditors belonging to these villages; also for distribution to the officers and soldiers of the army; and then provides that the location of these tracts shall be made by a board of magistrates of the villages to which the lands are adjacent, and the proceedings are afterwards to be sent to the provincial deputation for approval. The law then provides for the grants of the residue of the vacant or crown lands to every inhabitant of the villages who asks for them for the purpose of cultivation, and has no land of his own. The patents are to be made by a board of magistrates free of charge, and the provincial delegation are to approve of them. The decree was to be published not only among all the people of the kingdom, but among the national armies, and in every way, so that it might come to the knowledge of all the subjects.”

From this summary by the distinguished justice of the law as he read it, it is evident that he inferred that the power of granting all “the vacant and crown lands of the monarchy” (art. 6) was intended to be vested in the ayuntamientos, whereas, on more careful reading, it is seen that these municipal councils were authorized to deal only with such of the crown lands as lay within their respective jurisdic-

tions, and so to deal, not indiscriminately, but merely with selected tracts "most suited to cultivation." (Art. 9.) So far from it being the intention of the law to surrender to the ayuntamientos the great sovereign power of disposing at will of the entire public domain in their provinces, the tenth article limits the term "suerte" quite rigidly, declaring that "if it is possible, each suerte shall be such as, if regularly cultivated, shall be sufficient for the maintenance of one individual." Manifestly, the "suertes" contemplated as falling within the *jus disponendi* accorded to the ayuntamientos did not include the vast forests in the provincial mountains lying outside of the limits of the pueblos; and yet it appears by the first article that the provincial deputation, as the legislature of the entire province, in each case, was concerned in the disposition of "all" the public domain in the province, including the forests—"wooded lands and lands not wooded."

Influenced by this error in the interpretation of the statute, and giving undue importance to the provisions looking to the granting of "suertes" to soldiers concerned in advocating the cause of Spain, whether against France or against Mexican revolutionaries, the honorable justice then adverts to these provisions as tending to support a governmental policy adverse to that which inspired the revolution of the provinces which resulted in the overthrow of Spanish dominion there, and he says (*Ib.*, page 554):

"Serious disturbances existed in the vice-royalty of Mexico at this time, arising out of revolutionary struggles headed by Hidalgo Morelos and Bravo. One of the objects of the law was to compensate and encourage the defenders of the mother country against these revolutionary movements."

Then, upon the false data assumed, and because especially of the mistaken assumption that by "rewards for patriotism" were intended, not comparatively small "suertes" of pueblo arable lands, but indefinitely large grants of the "vacant or crown lands of the monarchy," he adds:

"Without pursuing the inquiry further, we think it quite clear that this law could not have been in force after the change of government, unless expressly recognized by the Mexican congress, and not then without being first essentially modified in its policy and purposes; and certainly, unless thus modified and the power in express terms conferred on the political chiefs of the territories to grant the public lands on sale, no such power can be derived from its provisions."

As applied to a province which had fully acknowledged the supremacy of Mexico as a republic, these deductions are irresistible, if they be limited to a denial of the pretensions of any political chief to grant the public domain without the consent of the provincial deputation, and a denial of the right of the ayuntamiento any further to grant "suertes" as rewards to persons who had opposed the revolution. It might also be well insisted that the revolutionary provincials, having finally become republican, were no longer affected by such of the provisions of the law as related to the application of the public domain to the payment of any part of the Spanish debt, or as attempted to subordinate their action to the authority of the home government. This opinion makes no allusion to the provincial deputation, except so far as that body was concerned in the capacity of supervisor of the action of the ayuntamiento, but we have seen that the provincial deputation, and neither

the political chief nor the ayuntamiento was made the prime mover and principal authority under the law.

The construction put upon the law in the provinces and the usages and customs which followed in its provincial administration must, at this late date and in view of the private titles which have resulted, be held conclusive by our own tribunals. The official functions employed by the provincial authorities were at once executive, legislative and judicial.

"No court in the universe," says Chief Justice MARSHALL in *Elmendorf vs. Taylor*, 10 Wheat. 152, "which professed to be governed by principle would, we presume, undertake to say that the courts of Great Britain or France, or any other nation, had misunderstood their own statutes, and, therefore, erect itself into a tribunal to correct such misunderstandings."

Hancock vs. McKinney, 7 Tex., p. 442.

Hardeman vs. Herbert, 11 Tex., pp. 656-660.

Carazos vs. Trevino, 35 Tex., p. 165.

Every law student knows how "rules of property" have sprung from judicial misconstruction and official and popular errors. *Aequitas sequitur legem*. Nevertheless, through an early judicial error, dower in a trust estate was lost to a wife, while a right "by courtesy" in such an estate abided in a husband. (1 Perry on Trusts, § 323.) The books are full of the sanctification of blunders by well established custom and usage. (*Brevoort vs. Brevoort*, 70 N. Y., page 140.)

The grant to Clarke, considered by the court in *United States vs. Clarke*, 8 Pet. 436, was made by Governor Coppinger in 1816. In the

course of a summary of the various royal cedulas and other laws pertaining to Spanish grants, Chief Justice MARSHALL refers (*Ib.*, pages 454, 455) to the law of the fourth of January, 1813, and says: "This order was transmitted to the captain-general of the island of Cuba, but seems to have been repealed on the twenty-second of August, 1814." The facility of maritime communication between Spain and Cuba and the control exercised by the royal government over that island put the provincial officials there more directly and sympathetically *en rapport* with both the cortes and the king, as they successively exercised authority in the stormy days of the peninsular, than were the more distant provinces. Thus, the law of the fourth of January, 1813, was promulgated in Cuba within a few months after it had been decreed by the cortes and published by the regency, and we find that accordingly the provincial deputation in that province, with the presumed sanction of the cortes, proceeded to carry it into effect, construing and applying it in harmony with the construction for which we have above contended, and with the subsequent practice of the provincial authorities of New Mexico and other provinces. An illustration of the proceedings of the provincial deputation at Havana is found in the case of *United States vs. Delespine*, 15 Pet., page 329, etc., where the court says:

"It appears that on the twenty-eighth day of May, 1813, Arrambide applied to the provincial deputation at Havana for two leagues of land to each point of the compass, making 92,160 acres; that, on the fourth of December, 1813, the deputation stated to the council of St. Augustine that it granted the land to Arrambide, and referred the grantee to the council with a command to expedite to him the title. The

ordinary mode of granting lands in Florida had been directly, either by the captain-general of Cuba or the governor of Florida; but owing to a recent call of the cortes in Spain and a reorganization of the Spanish government existing at the date of the concession, and which state of things lasted only for a short time, the mode of proceeding in regard to granting the public domain was changed, and the powers vested in the tribunals known as the ‘provincial deputations.’ This appears by the royal order of the fourth of January, 1813, found in the United States Land Laws, Appendix, 1006. It was made the duty of the provincial deputations to devise the most convenient means of making grants; and, through the secretaries of state, to report the same to the cortes for their recognition and adoption. The deputation at Havana assumed the power to grant, and nothing appearing to the contrary of the existence of the power in that body, and the concession made at Havana not being opposed to the royal order of January, 1813, and there being no occasion in this case to inquire into the powers of the provincial deputation, we have treated the testimonial as emanating from the proper authority, leaving the point open for future inquiry, should an occasion call for it and positively require us to decide whether the deputation had the power assumed.”

The court then proceeds to show that, in locating the grant to Arrambide, the council of St. Augustine, at his request, permitted him to abandon his first location, specified in the grant made by the provincial deputation, and select a separate and distinct tract of land situate sixty or seventy miles farther south than the one originally granted. The court thereupon held that the title claimed on this new

selection, without the privity of the provincial deputation, was void, and denied that the council (*ayuntamiento*) had any original power in the premises, saying (*Ib.*, page 334):

“The council neither had, nor professed to have, in itself the power to make a new and independent grant to Arrambide, thereby disregarding the commands of its superiors, and of the laws and regulations recently adopted for the government of the provincial deputation when granting lands. The concession was therefore void for want of power in the tribunal that assumed to make it.”

It will be further observed, on perusal of the statement of the facts appearing in the opinion, that the title failed to present even equitable features, since the land claimed had never been identified or reduced to actual possession. The court adds (*Ib.*, page 334):

“The court say, in the case of the *United States vs. Clarke*, 8 Pet. 454-5, that the royal order of the fourth of January, 1813, founded on the decree of the cortes, seems to have been repealed on the twenty-second of August, 1814. That it was annulled by the king about that time there can be no doubt; and it may be that the title of Arrambide would not have been recognized by Spain after the repeal. So it may have been impossible for him to make the survey or return the proceedings to the deputation of Havana, according to any known law, after the repeal; that he had no time to do so between the twenty-second of March, 1814, when the council made the concession, and the twenty-second of August of that year, when the repeal took place, may be safely assumed; yet, with the very

slight information we have on this subject, and of those times in the history of Spain, it has been deemed proper not to institute an inquiry into the effect of the repeal of the royal order of 1813."

We are now brought to the proposition that, notwithstanding the repeal, in 1814, of the law of 1813, and notwithstanding the Mexican revolution and the successive steps taken by the Mexican provinces toward the final establishment of the republic on a settled basis, the government of New Mexico granted to Antonio Chaves a title to the lands in question which was complete at the date of the treaty and which has gathered dignity with the efflux of succeeding years. Promptly on the revocation of the law of 1813 by the restored king, in the next year succeeding, the fact was made known in Cuba and, accordingly, the provincial deputation there ceased to make grants of the public domain. Moreover, by reason of the abrogation of the Spanish constitution of 1812 and the laws which flowed from it, the provincial deputation and other constitutional authorities in that province passed away, and, obedient to the royal will, the ancient official machinery was again put in operation. Therefore, we find that grants, through the instrumentality of Cuban officials, made between 1814 and the restoration of the constitutional regime in 1820, emanated from the captain-general, or some official exercising similar functions, as in the case of the grant made to Clarke in 1816 by Governor Coppinger (8 Pet. 436). In the more remote and insignificant provinces, such as New Mexico, the promulgation of new Spanish laws was often delayed for obvious reasons. Besides, unlike the wealthy provinces, they were not the immediate objects of sovereign solicitude. Quite naturally, the history of the weaker and more indigent

provinces is obscure. Unattractive to the historian, they have furnished but slight additions to political literature. New Mexico, especially, has escaped critical attention, for she took no prominent place in the march of events. Although the Mexican revolution raged with more or less severity during a period of fourteen years prior to the *Acta Constitutiva*, history records no battles fought within her limits in the contest with the crown, or in factional warfare. During most of the bloody disturbances in the wealthy southern provinces, New Mexico seems to have led a life of peace, maintaining social order under her own usages and customs and the established form of government, with a Spanish governor exercising the chief executive, legislative and judicial power. But the persistent efforts of the revolutionaries in the lower provinces finally inspired the people of New Mexico with an increase of republican spirit, and gradually that province grew into a *quasi*-autonomy independent of Spain. While but a few of the reforms intended by the constitution of 1812, and the accompanying constitutional laws, may have been established within the province until the restoration of the constitution in 1820, they must have had at least an educatory effect upon the inhabitants, as they were brought by rumor or otherwise to their attention; and, when, in 1820, the constitutional regime was revived in Spain, and the old constitutional laws of the cortes (including that of the fourth of January, 1813) were again put in force at home, they were gladly accepted by New Mexico, as well as the other provinces abroad. From that epoch, the form of *quasi*-republican government, provided alike by the Spanish constitution of 1812 and that of 1820, was firmly established in New Mexico. The province was governed by a political chief and a provincial deputation, and the law of the fourth of January, 1813,

was accepted, interpreted and enforced there. Thus arose a settled usage and custom in the granting of public lands which abided until long after 1825. Presumably the first constitutional political chief was appointed by the home government. But, even after the Spanish forces in the Mexican provinces had been finally overcome, and the provinces had become actually independent of the mother country, the same provincial form of government was kept up, by political momentum, not only in New Mexico, but also in every other province. The situation of each was in this respect quite analogous to that of each American colony at the date of our declaration of independence. The very theory of the genesis of political and social usages and customs assumes that their origin is obscure—often a mere matter of speculation; so that, while we believe that the law of the cortes of the fourth of January, 1813, was an energetic force in the generation of the provincial granting authority, we may also invoke the more ancient law, including the royal cedula of 1754, as explaining any part taken by the provincial executive (successor of the Spanish governor) in the same subject of administration.

A cursory examination of the progressive steps of the Mexican revolution after the restoration of the Spanish constitutional regime in 1820, will show that at the date of the Antonio Chaves grant (March 3, 1825), nothing had yet occurred to impair in any respect the jurisdiction of the local government of New Mexico over the public domain. On the contrary, it will appear that the usages and customs of that province, in this respect, were in harmony with the political movements in the City of Mexico and with the *soi disant* "plans," "bases," projects and laws which were, from time to time, formulated and fulminated by soldiers, plotters, usurpers, reformers

and irregular assemblies in that and other cities of the central and southern provinces. Little or nothing of a *de jure* character is seen in the varying phases of assumed authority presented by Mexico during this period of social commotion. The only satisfactory legal solution of these imbroglios is found in the application of the rules of public law which relate to *de facto* governments and laws, and before even those rules can be logically applied it must appear that, by force or usage, the pretended governments and laws had attained importance by actual operation and recognition in the very jurisdiction in which they are invoked. A mere ideality in polities is not an authoritative power. It will also appear that, at the date of our grant, no authority, either *de jure* or *de facto*, was exercised in New Mexico, by any governmental power whatever, inconsistently with the exercise of governmental power by the political chief, provincial deputation, ayuntamientos, alcaldes and other officials of that province. We contend that these provincial functionaries acted *de jure*, but it is beyond contention that they acted at least *de facto*. In *Rhode Island vs. Massachusetts*, 12 Pet. 657, it was urged that the people inhabiting the territory in dispute between those states ought to have been made parties to the litigation between them concerning the state boundaries; but the court said (*Ib.*, page 749):

“There are two principles of the law of nations which would protect them in their property: 1. That grants by a government, *de facto*, of parts of a disputed territory in its possession, are valid against the state which had the right. (12 Wheat. 600-1.) 2. That when a territory is acquired by treaty, cession or even conquest, the rights of the inhabitants to property are respected and sacred.”

(Also *Pollard vs. Kibbe*, 14 Pet., at page 410, and *Texas vs. White*, 7 Wall., at pages 732, 733.)

Philosophically speaking, the sovereign standing of almost every government is rather *de facto* than *de jure*. Sovereign powers are assumed and exercised by the powerful, and the powerless acquiesce. Even our constitutional union was formed in spite of the resistance and protest of a large and intelligent minority. The genesis of every society seems to involve a growth which is logically the result of natural forces rather than of the pre-determination of its members. *L'homme propose, Dieu dispose.* The superiority of an existing fact in nature or society over any mere theory of its existence is seen in the respect paid by the common law to every office and other establishment that has for any serious length of time been operative as a social factor. This deference to established things is illustrated by the rule which sanctions as legal the acts of a *de facto* officer or official body. The same principle lies at the root of the autonomic existence of the several American colonies after the declaration of independence. Originally, these colonies were merely dependencies of the crown—political sub-divisions of the royal domain. Yet, because each colony possessed a formal governmental establishment, in whose powers none of the sister colonies participated, it was not unnatural that, after the revolution, each should assume, not only the exclusive right of its local government, but also the exclusive *jus disponendi* of the crown lands found within its territorial limits. During the formative period of the American Union there were many so far imbued with the ideas of a strong central government that they insisted that all outstanding unappropriated crown lands, wherever situate, within the respective colonial limits, should be deemed and treated as part of the

public domain of the Union. The wishes of such, in this respect, were to a great extent gratified by the surrender to the Union of the northwestern territory and other extensive tracts of land. Fortunately, the common sense of our people and the clear terms of our constitution, as well as the good order and the good faith which characterized the distribution of our social forces at the birth of our nation, have prevented any disastrous collision over the crown titles. Suppose, however, that, in the establishment of our national government, the policy of incorporating all public lands into the public domain of the Union and under its jurisdiction had prevailed; would not all private titles derived by citizens from the local governments within whose territorial limits the granted lands lay have been respected? Would not the fact that such titles had been granted by a government *quasi autonomic* holding possession and claiming the *jus disponendi* of the public lands within its jurisdiction have had great weight as matter of political equity? In such case, it would have readily been seen that the affected lands could in no wise be deemed to have been derived from the confederation, but that they had been wrested by the respective colonies from the British crown, and, on the same principle that each colony, after the revolution, could claim its own autonomy, it could also claim the crown lands as the necessary incident of such autonomy. A theory which should hold the crown lands of all the colonies to have become vested in the confederation by virtue of the revolution, would be necessarily destructive of the autonomic principle of colonial life.

The provincials of Mexico were held by the king of Spain by a title quite analogous to that by which the king of England held the colonial crown lands. Although the king of England had no viceroy, the

existence of the Spanish viceroy of New Spain does not militate against this analogy; for the viceroy was simply an *alter ego* of the king, and the Spanish provinces were no more consolidated because of his governmental supervision than they would have been had the king governed them directly, without his intervention.

Vide 1 Story, Constitution, §§ 227, 228.

The *de facto* element was very potent in our Union during the revolutionary war, and at the time of the adoption of the articles of confederation. Consequently, the usages of the colonial authorities in the exercise of public powers have always been respected, even when opposed to the theory of central sovereignty, under which it was contended by some that all vacant ungranted colonial lands became common lands of the Union.

[In the following summary of relevant events of the Mexican revolution, most of our references are made to Zarate's "La Guerra de la Independencia," which composes Tomo III of the work, published at Mexico and Barcelona (under the editorship of the historian Palacio), entitled "Méjico á Través de Los Siglos," and to Olavarria y Ferrari's "Méjico Independiente," which composes Tomo IV of that publication.]

While New Mexico was thus living quietly and in perfect good faith under the constitution of 1820 and the constitutional Spanish laws, as well as all applicable old laws, usages and customs, the fierce struggle which had been raging in New Spain proper, where nearly all the provinces had revolted, between the viceroy and the revolutionary generals came to a culmination. O'Donojú, the viceroy, was a constitutional monarchist, and owed his commission largely

to the influence of the American members of the Spanish cortes. (3 "Méjico," 741.) Fearing that otherwise Spain might lose her Mexican possessions, he was willing to make peace on any terms consistent with the royal dignity. Iturbide, after serving the king for ten years in bloody and ruthless antagonism to the revolution, turned traitor and beguiling Guerrero, who was in command of a revolutionary army, joined with that general in the formulation of the "Plan of Iguala," which was proclaimed by Iturbide on the twenty-fourth of February, 1821. (3 "Méjico," 675, 678.) Less than a fortnight before this date nearly all the deputies from New Spain were assembled at Vera Cruz, in order to take passage there for the mother country, where they were expected to attend the approaching cortes. Iturbide endeavored to persuade them to remain and open a congress under his new project of government, but very few consented, and nearly all sailed for Spain on the thirteenth of February. (3 "Méjico," 676.)

The Plan of Iguala (3 "Méjico," 678) was first proclaimed in a form more abbreviated than that in which it was sent by Iturbide to the viceroy, although not essentially different. Its articles embraced, among others, a declaration of the independence of New Spain, with further declarations to the effect that its government should be a moderate monarchy in substantial-conformity to the Spanish constitution ("con arreglo á la constitucion peculiar y adaptable del reino"); that its emperor should be Ferdinand VII, but if he should fail to appear personally in Mexico and take the oath, then there should be invited in his place the infante Don Carlos, or Don Francisco de Paula, or the Archduke Carlos, or some other member of the reigning family deemed suitable by the congress contemplated by the plan;

that, until the meeting of the congress and in order to bring that about and to carry carry into effect the purposes of the plan, a “*Junta*” (assembly or board) to be called “*Gubernatira*” (governing) should be formed; that the junta should govern in the name of Ferdinand VII until his arrival and qualification, but treat as suspended all royal orders which might be issued by him meanwhile; that the congress (“*las cortes*”) should determine whether to continue the junta or substitute therefor a regency pending the arrival of the person to be crowned; that in case Ferdinand VII should not consent to come to Mexico, the junta, or the substituted regency, should govern in the name of the nation, while the selection and coronation of the emperor should be pending; that the congress should establish the constitution of the Mexican Empire; that all inhabitants of New Spain should be citizens; that the person and property of every citizen should be protected by the government; that the junta should take care that all branches of the state should remain without any alteration whatever, and all functionaries—political, ecclesiastical, civil and military—just the same as they then were (“15. La Junta cuidará de que todos los ramos del Estado queden sin alteración ninguna y todos los empleados políticos, eclesiásticos, civiles y militares, en el estado mismo en que existen en el dia”); that until the organization of the congress all criminal proceedings should be conducted in strict conformity with the Spanish constitution (“21. Interin las cortes se establecen, se proeederá en los delitos con total arreglo á la constitución española”); and that, since the congress about to be convened had to be constituent (*constituyente*), it was necessary for the deputies to receive adequate powers in that behalf, and, since it was very important that the electors should know

that their representatives were to be for the congress of Mexico, and not that of Madrid, the junta should prescribe just rules for the elections and indicate the time for them, as well as for the opening of the congress.

This plan did not contain a word suggestive of Iturbide's secret ambition to gain the crown. On the twenty-fourth of August, 1821, however, when Iturbide and the viceroy O'Donojú, having come to terms mutually satisfactory, entered into the so-called Treaty of Cordova, on the basis of the Plan of Iguala, there appeared in the treaty a modification of the Plan by which Iturbide secretly and subtly prepared the way for reaching the throne, by providing that, in case Ferdinand VII and other members of his family, specifically named in the treaty, should refuse the crown, or not be acceptable, then it should be conferred on whomever the congress of the empire might designate ("el que las cortes del Imperio designen"). While this treaty confirmed substantially the Plan of Iguala, it made some modifications (3 "Méjico," 739, 740). Among other changes, it styled the proposed junta "*Junta Provisional Gubernativa*," and altered its personnel, and it provided that the junta should have a president who might or might not be one of its members; that the junta should issue a manifesto to the public setting forth the purposes of its establishment and instructing the people regarding the proposed election of deputies to the congress; that, after the selection of its president, the junta should appoint a regency composed of three persons from within or without its own body; that the executive power should reside in the regency, and it should govern in the name of the monarch, "until he should grasp the sceptre of the empire"; that meantime the junta should govern in conformity with the *existing laws*, in everything not opposed to

the Plan of Iguala, and during the formation of the constitution by the congress ("XII. Instalada la Junta provisional gubernará interimamente conforme á las leyes vigentes en todo lo que no se oponga al Plan de Iguala, y mientras las Cortes formen la constitución del Estado"); that the regency should proceed to call the congress together according to the method determined by the junta, this being declared to be conformable to the spirit of article 24 of the said plan; and that the executive power should reside in the regency and the legislative in the congress; but that the junta, until the meeting of the congress, should exercise the legislative power in urgent cases, acting in accord with the regency, and also act as an auxiliary and consulting body for the latter.

Always stimulated by his kingly ambition, Iturbide, afterwards, nominated as "*La Junta provisional gubernativa*" thirty-eight favorites, all of whom were either noblemen or affiliated with the aristocracy (4 "Méjico," 11), although urged by a friend to invite the co-operation of the provincial deputations in fixing the personnel of the junta (*Ib.* 13). Having organized and proclaimed the junta, on the twenty-eighth of September, 1821, with Iturbide as its president, he and the other members of that body signed and promulgated on that day the declaration of independence of the Mexican Empire ("Acta de Independencia del Imperio Mexicano"), which, in so many words, professed conformity with the principles laid down in the Plan of Iguala and the Treaty of Cordova ("con arreglo á las bases que en el Plan de Iguala y tratados de Córdoba estableció sabiamente el primer jefe del ejército imperial de las tres garantías"). *Ib.*, page 17.

This declaration of independence, limited as was its scope, was received with favor in nearly all the

provinces, although some dissented and insisted on maintaining their respective autonomies. Such is the ground on which it is not unusual to fix the date of Mexican "independence" as the twenty-eighth of September, 1821.

In pretended pursuance of the Plan of Iguala and the Treaty of Cordova, and under the "Acta de Independencia," based on those instruments, the junta proceeded to call a congress of deputies from the several provinces as well as to make provisional and arbitrary selection of persons to act in the place of absent deputies or in the name of provinces that might fail to hold elections; and it organized a regency with Iturbide at the head.

Some of the provincial elections of deputies were held according to the provisions of the Spanish constitution of 1820, and others according to the terms of the call of the junta and regency, but, notwithstanding these and other irregularities, the congress contemplated by the Plan of Iguala and the Treaty of Cordova convened and organized in the city of Mexico on the twenty-fourth of February, 1822. (*Ib.*, pages 52, 53, 55.)

It was soon made manifest that this body, called to make a constitution, was, in spite of the stormy opposition of a large minority, many of whom were arbitrarily jailed by Iturbide, turned into his willing tool. It failed to propose a constitution, but it succeeded, by an illegal vote, in declaring Iturbide hereditary emperor of the "Mexican Empire." (4 "Méjico," 77.) Accordingly, he was crowned on the twenty-first of July, 1822. All this occasioned the express protests of several provinces, by their political chiefs, provincial deputations, and ayuntamientos, as in the case of Nuevo Santander. (*Ib.* 83.) For three months, Iturbide sought to overawe the congress, while that body resented his inter-

ferencee, and then, by his unlawful decree of the thirty-first of October, 1822, as well as by force, he dissolved and dispersed it. (*Ib.* 85.)

Thereupon, Iturbide, without any pretense of constitutional or statutory right, created a new junta, called *La Junta instituyente*, to take the place of the junta which had ceased to exist on the organization of the congress, and selected as its members two persons as deputies for each of some of the provinces and one as deputy for each of the others. (*Ib.* 85.) In consequence of these tyrannical proceedings on the part of Iturbide, new disturbances arose in many of the provinces, and, on the sixth of December, 1822, General Santa Anna, who had abandoned Iturbide and, entering Vera Cruz, gained over its garrison, there formulated and proclaimed the "Plan of Vera Cruz," declaring, among other things, that citizens should enjoy their respective rights of persons and property in conformity with the [Spanish] constitution and the laws; that the governmental functionaries should continue in their offices and faculties. ("Los ramos del estado quedarán sin variación alguna, y todos los empleados políticos, civiles y militares se conservarán en sus empleos y destinos, menos los que se opongan al actual sistema, pues á estos con conocimiento de causa se les suspenderá hasta la resolución del congreso"); that civil and criminal causes should proceed according to the Spanish constitution and the existing laws and decrees promulgated up to the time of the audacious extinction of the congress ("En las causes civiles y criminales procederan los jueces con arreglo á la constitución española, leyes y decretos vigentes expedidos hasta la temeraria extincion del congreso en todo aquello que no se oponga á la verdadera libertad de la patria"); that certain provisions proclaimed on the 2nd inst. by Santa Anna, on consultation with

the provincial deputation of Vera Cruz, should be observed; and that the provisions of the "Plan" should be without prejudice to the faculties of the sovereign congress ("las altas facultades del soberano congreso") in which the power to modify them was thereby expressly acknowledged (4 "Méjico," 86, 87).

Echávarri and the other imperial generals, engaged in the siege of Vera Cruz against Santa Anna, combined with him, on the first of February, 1823, in the formulation of still another government project —called the "Acta de Casa Mata"—wherein, among other things, it was declared that, the sovereignty residing in the nation, the congress should be installed in the shortest possible time, upon the same basis first prescribed ("bajo las bases prescritas para las primeras"); that, since some of the deputies to the dissolved congress were, by reason of their liberal ideas and strength of character, worthy of public esteem, while others had lost the public confidence, the provinces should be at liberty to re-elect the former and to substitute more suitable persons in place of the latter; that, pending an understanding between the supreme government and the army, the provincial deputation of Vera Cruz might exercise administrative faculties; and that the army should be stationed in the cities and wherever emergencies might require, support the congress in its deliberations, and not disband, except on the order of that body. (*Ib.* 88, 89.)

This plan, with its formidable military support, and its acceptance in many provinces, finally compelled Iturbide to issue a decree on the fourth of March, 1823, recalling the deputies for the reconvention of the congress, and, in consequence, a *soi disant* session of that body opened on the seventh of the same month, although, owing to the absence of

distrustful deputies, a legal quorum had not yet gathered. (*Ib.* 90, 91.) Before this body, Iturbide tendered his abdication as emperor on the twentieth of March, 1823, although by its terms he reserved the supreme authority with liberty to delegate its exercise to persons worthy of the confidence of the congress, until it should pass upon the abdication. Before making a final disposition of the question of abdication, the so-called congress undertook to appoint a provisional government called the “Poder Ejecutivo,” composed of Bravo, Victoria and Negrete, of whom the first two were absent, their places being supplied temporarily by Michelena and Dominguez. On the seventh of April following, the congress declared, among other things, that the coronation of Iturbide was an act of violence and was null; that all resulting acts were illegal and subject to confirmation by the “existing government”—*actual gobierno*; that the supreme executive power should promote the speedy departure of Iturbide from the national territory; and that there never was any right to subject the Mexican nation to any law or treaty, except such right as lay in the nation itself, or its elected representatives, according to the public law of free nations; and, in consequence, the congress considered the Plan of Iguala and the Treaty of Cordova as non-existent, and that it remained absolutely at liberty to adopt that form of government which it should deem suitable. (*Ib.* 93, 94.)

The recklessness and absurdity of these declarations are abundantly pointed out by Olavarria. (*Ib.* 94, 95.) We thus find that a congress founded on the Plan of Iguala and the Treaty of Cordova, and elected for the express delegated purpose of forming a constitutional monarchy accordingly, actually assumed to destroy the very foundations of its legal existence, and, by tyrannical usurpation, to reform

the government on an entirely inconsistent theory. Such acts bear only a *de facto* character, and could not *per se* override the existing *de jure et de facto* legal establishments, laws, usages and customs of the provinces. It is evident that the executive government—"Poder Ejecutivo"—born of such usurpation possessed no *de jure* authority whatever.

No wonder that temporary anarchy followed, and that many provinces,—*quasi-autonomies*, with their political chiefs, provincial deputations, ayuntamientos and other official authorities—such as Guanajuato, Morelia, San Luis Potosi, Zacatecas, Oaxaca, Texas, Coahuila, Nuevo Leon and Tamaulipas, as well as others in Central America, openly asserted themselves against the lawless proceedings of the alleged congress and "executive power." (*Ib.* 98, 99.)

On the twenty-first of May, 1823, the "congress" decreed a call upon the provinces to elect deputies to a new constituent congress, upon a plan of election which met with general favor among the people in the provinces, although some of the provinces still resisted all the measures emanating from the capital. (*Ib.* 99.) This new scheme involved the formulation of proposed bases of government on which the new deputies were expected to act in the adoption of a federal constitution, and these bases, printed in circulars, were published among the electors. They embraced substantially the provisions which the new constituent congress, which convened on the seventh of November, 1823, adopted as the *Acta Constitutiva*. (*Ib.* 99.) The fifth article declared that the form of government should be republican, representative, popular and federal; and the sixth article declared that "its integral parts are *sovereign and independent states* in all that relates exclusively to its *internal administration and government*, as detailed in this act and in the general constitution." (*Ib.* 99.)

The constituent congress thus called was, in effect, a constitutional convention. The provinces elected their deputies on the express understanding that all were on an equal footing, and that each, either by itself, or in combination with contiguous provinces, should become a "free sovereign and independent state." New Mexico was represented in the convention on this well understood plan. Even after the convention had been in session for upwards of two months, the "Acta Constitutiva," signed by the deputies on the thirty-first of January, 1824, declared (in its sixth article) not only that the integral parts of the nation were "free, sovereign and independent states," but (in the seventh article) that among the "states at present comprising the federation" was "the internal state of the north containing the provinces of Chihuahua, Durango and *New Mexico.*" (1 *White*, 375.)

In these circumstances, it is impossible for a constitutional lawyer, bred under our system, to understand on what pretense the convention or congress, by its decree of the sixth of July, 1824, assumed to declare New Mexico a "territory."

("Legislacion Mexicana" de Manuel Duolan y José María Lozano; Edicion oficial; Mexico, 1876; Tomo II, pp. 709-10.)

If we regard the *Acta Constitutiva* as a provisional constitution serving the purpose of a basis of temporary government until the adoption of the federal constitution, then in contemplation, and its due promulgation, and further attribute to the constituent congress, which enacted the *Acta Constitutiva* on the thirty-first of January, 1824, the right to legislate consistently with that enactment until the new constitutional congress should come into being, still it is plain that it had no constitutional power to declare New Mexico a territory.

1. The province of New Mexico was by article 7 of the Acta Constitutiva (1 White, 375), put in the list of the "free, sovereign and independent states."

2. The only territories provided for were the Californias and the greater part of the district of Colima. (*Ib.*, art. 7.)

3. By article 8 (*Ib.*) it was provided: "The *constitution* may increase the number of states mentioned in the preceding article, and modify them as it may deem most conducive to the happiness of the people." This gave no power to the congress to destroy or degrade any state.

4. By article 34 (*Ib.*) it was provided: "The general constitution and this act guarantee to the states of the Union the form of government adopted by this law, and each state assumes likewise the obligation of sustaining the federal Union at every sacrifice."

Of course this article embraced New Mexico.

5. By article 35 (*Ib.*) it was provided: "This act can only be changed within the time and in the manner expressed in the *general constitution*."

The act being a constitutive one, of the nature of a constitution, this article, as well as article 34, was unrepealable by the mere congress.

6. Therefore, the congress could not constitutionally repeal or amend article 7 by which New Mexico was given her status as part of the internal state of the north, and, consequently, the decree of the sixth of July, 1824, declaring her to be a territory, was unconstitutional.

On the eighteenth of August, 1824, this same constituent congress, or convention, assumed the power to enact the familiar colonization law.

The "bases," suggested and published by the former so-called congress, which passed out of being on the thirtieth of October, 1823 (4 "Méjico," 101), and the *Acta Constitutiva*, decreed on the thirty-first of January, 1824, declared (*Acta Constitutiva*, art. 10; 1 *White*, 376) that "the legislative power of the federation resides in a chamber of deputies and a senate," and (*Ib.*, art. 11) that "the members of the chamber of deputies and of the senate shall be named by the states in the manner prescribed by the constitution."

It seems to us that these constitutive declarations looking to the adoption of the constitution, which took place on the fourth of October, 1824, necessarily left the enactment of all general laws, save provisions indispensable to the exigencies of the convention itself, to the constitutional legislative power, when it should have come into existence.

Neither the *Acta Constitutiva*, nor the constitution of 1824, contains a word on the subject of the disposition of the public lands in the states and territories. We suggest that, but for the subsequent practical interpretation of the colonization law by the state and territorial tribunals and officials of Mexico, it might well be held that the colonization law was void in its inception, and could not gain validity except by constitutional or legislative ratification.

A law so vicious in its origin as the colonization law is only *de facto* legislation in its embryotic state, and it could not become in the slightest degree respectable, until after, first, perfect promulgation, and, secondly, actual acceptance and application in the jurisdictions affected. Indeed, according to our ideas and procedure in the enactment of federal and state constitutional provisions, they do not become

operative until finally ratified by the sovereign people concerned.

During this nebular and chaotic period of Mexican history, the laws ("leyes vigentes"), usages and customs which were incorporated, as vital and energetic factors, in the official and social system of New Mexico and other provinces, abided in active vigor, and many private titles, including that of Antonio Chaves, accrued under them. He that seeks to impeach them as emanating from unlawful authority is called on to prove clearly the truth of his accusation (19 How. 343, *supra*).

The disorderly, inconsistent and arbitrary proceedings thus apparent in the Mexican political movements kept even our government, then so full of sympathy with the aspirations of men to freedom, from giving recognition to any of the contending factions until a late day. Even after the installation of Iturbide as emperor, John Quincy Adams, our secretary of state, after due and friendly inquiry, could not advise the executive to recognize the Mexican Empire.

It was not until the eighth of March, 1825, that we accredited a minister to the Republic of Mexico. Even while the wild and reckless congress of 1823 was in session in Mexico, the Spanish cortes, with the American deputies, who made a part of it, was in session in Madrid.

There never was a time prior to the granting of the Antonio Chaves title, or long afterwards, when even a hint was given by legislation or executive order in denial or in disparagement of the granting functions exercised by the provincial deputation of New Mexico, with or without the concurrence of the political chief. All through the stormy, perilous times, from the Plan of Iguala to the adoption of

the "constitution" of 1836, the provincial deputations and political chiefs were recognized, first by implication and later by express decree, as the governing forces in the provinces which had at last evolved into "territories." The Acta Constitutiva, which placed New Mexico in the category of "states," out of which no attempt to displace her was made until the unlawful decree of the sixth of July, 1824 (1 "*Legislacion Mexicana*," *supra*, pages 609, 610), declares (art. 25; 1 White, 379) that "the legislatures of the different states may provisionally organize *an internal government and in the meantime they must see that the laws actually in force be observed.*" We have seen that usages and customs, ancient or recent, formed part of these laws. The Plan of Iguala (art. 13, art. 15; 3 "*Méjico*," 679) and the Treaty of Cordova (art. 12; 3 "*Méjico*, 740), as well as others of the numerous governmental projects (*Plan of Vera Cruz*, art. 9; 3 "*Méjico*," 87; *Acta de Casa Mata*, art. 5; *Ib.* 88), showed equal solicitude for the preservation of the old laws and official powers. *Vide, etiam*, page 448, chapter XVII of 1 "*Legislacion Mexicana*," *supra*, showing the provision of the Spanish law under the constitution of 1812, for continuing the old laws, and, *Ib.*, page 422, the provision made June 23, 1813, for the promulgation of laws in the provinces by the political chiefs. The law of the cortes of the fourth of January, 1813, relating to the alienation of the public domain, *supra*, was included as among the "*leyes vigentes*" or laws in force, in a work ("*Leyes Vigentes*," page 58,) published in the City of Mexico in 1829. (*Cohas vs. Raisin*, 3 Cal. 443, 447; also citation by Mr. Justice WAYNE in the Vallejo case, 1 Black, pages 561, 562.) Indeed, everywhere we look in the political literature of Mexico, as well as in the practical exposition and application of the accepted law of the land by the

tribunals established in the provinces, we find plain traces of the extancy of these old laws and of the usages and customs which attended them.

To sanction now a new and strange construction of the Mexican system of jurisprudence and political administration, and thereby overthrow old titles sanctified by time, good faith and unchallenged enjoyment for scores of years, would be an anomaly in the judicial interpretation of treaty obligations and in the judicial application of the "principles of public law." Every country regards as the highest evidence of legal right a settled claim of right accompanied with actual long continued enjoyment, sanctioned by the tribunals and other authorities having jurisdiction to question the claim if unfounded.

Hence, as we have seen, judicial errors in the exposition of the law grow into "rules of property." Even popular errors in the construction of statutes become ultimately the accepted law. *Communis error facit jus.* The statute of uses was construed so as to defeat its very letter and intent. The old statutes of limitations and of frauds were substantially amended by judicial construction and by usage. In defiance of the true intent of the several organic acts, the territories have for fifty years usurped the right to displace the stern law of murder declared by the Crimes Act of 1790, by milder local provisions (*Vide* argument of counsel in the Yarberry case, 2 New Mexico, page 397 *et seq.*), and usage has given sanction in the courts to this legislative usurpation. At the time of the Dred Scott decision, no one would have imagined that the organic acts of New Mexico and Utah were intended, by authorizing an appeal to this court directly from a district judge, at chambers, in a matter of *habeas corpus* "involving the question of personal freedom," to confer on the appellate tribunal any authority, except to determine whether

the detained person was a freeman or a slave. Yet, usage appears to have settled the law otherwise. (*Vide*, 11th point (page 45) of Appellee's brief filed in the *Delgado* case, 140 U. S. 586.) Even a printer's blunder in the publication of an old statute has led to a false construction which the courts have upheld on grounds of public convenience. (*Please vs. Peck*, 18 How. 595.) Municipal bonds have been held to be constitutionally binding contracts, or the contrary, accordingly as they have conformed or not to the adjudications of the state courts extant at the time of their issue, although, being afterwards deemed unsound, such adjudications were finally overruled. (*Douglass vs. Pike County*, 101 U. S. 677, 686, 687.)

Precedents without limit might be furnished to show the conclusive import of the practical interpretation of law, statutory and otherwise, by those concerned officially in its exposition and enforcement, as well as by the public at large. (*Vide*, SECOND POINT, *supra*.) So that we may well assume that the authority under which Antonio Chaves derived his title was the authority understood, acknowledged and forceful in the place and at the time in which it was granted.

If we should cede back a part of Arizona to Mexico, we would not tolerate such criticism by Mexico of our statutes and the action of our land office and judiciary, in their construction in respect of private land claims, as would be equivalent to the forensic dilettanteism which at this late date urges upon our tribunals, vested with a "benign jurisdiction" in the administration of a treaty, to put a jealous political and judicial microscope, and even X ray scrutiny, upon a Mexican title generated in a darker day, without the aid of a Land Court or a Roentgen. Nor must it be forgotten that titles in

New Mexico, granted in 1825, under the old laws, usages and customs then in operation, are in no respect analogous to titles to public lands attempted to be granted under those laws, usages and customs, after such lands had been acquired by our government by conquest or by cession. The *quasi-autonomy* accorded to the respective provinces by the Spanish constitution of 1812, revived in 1820, developed in greater energy by reason of the course of revolutionary events, and, upon the separation of the provinces from the mother country, each took, as a forced inheritance, its crown lands, laws, usages and customs, precisely as each of our colonies took the like on the assertion of their independence. None of the laws were of the nature of foreign laws. They continued to be adapted in general to the new situation, as they had been to the old. Even the mining laws remained in force, as is evident from the subsequent congressional decree of the seventh of October, 1823 (*Schmidt's Civil Laws, App. No. IV.*). New Mexico was never conquered; nor was she ever bought by Mexico. Of her own free will, invited to become "a free, sovereign and independent state," she sanctioned her representation in the constituent congress. Since her representative could not consent to degrade her into a "territory," nor to surrender her dominion over her public lands to the proposed confederacy, she never became a "territory," until she accepted the constitution of 1824, by which her status was so defined. She did not accept that constitution until she sent her deputy to the first Mexican congress convened under that instrument. Under article 16 of the constitution of the fourth of October, 1824, which was not promulgated until the lapse of a considerable time after that date, the elections for the first constitutional congress could not occur until October, 1825, or some other

month in the autumn of that year. The constituent congress was not finally dissolved until the twenty-fourth of December, 1825, and the first constitutional congress was not organized until about nine months after the date of our grant. (4 "Méjico," 129; Cons., art. 16 and art. 67; 1 White, 389, 397.) Although the Mexican constitution of 1824 may have been, as said by its enemies, a bad mixture of the American and French constitutions, it is impossible to find in it a single word suggesting the destruction of the *quasi-autonomy* of New Mexico. A "territory" of more than forty thousand inhabitants could send to the congress a deputy who had equal "voice and vote in the formation of all laws and decrees" with any state deputy (Cons., art. 14), and the states could select only one deputy for every eighty thousand inhabitants or every fraction exceeding forty thousand (*Ib.*, art. 11). The chief serious disparity appears in the fact that only the states could elect senators. The constitution (*Ib.*, art. 137, subd. 1) conceded the right of the states, as such, to make concessions of land, since it provided for the jurisdiction by the Supreme court of litigation "between individuals in relation to lands, under concessions from different states." So far as the terms of the constitution were concerned, the policy as to the territories was negative—one of *laissez faire*.

There being nothing in the *Aeta Constitutiva* of the thirty-first of January, 1824, or in the constitution which followed it, indicating any purpose to change the jurisdiction of any old province over its public lands, they imported no more on the subject than did our own articles of confederation on the kindred subject of crown lands in the colonies. Presumptively, then, the dominion over the provincial public lands remained vested in the respective

provinces (whether called states or territories) as before, according to the principles of public law; and, since no alteration had yet been suggested in the form of government of any province styled a "territory" by the constitution, the old form of government, by a political chief, deputation, etc., continued.

Manifestly, the colonization law attempted to be passed on the eighteenth of August, 1824, could not be presumed to be binding on any province that was not legitimately privy to its enactment, for it did not come within the purview of the call for the constitutional convention or *congreso constituyente*. Recently emancipated from a despotism, the provinces were naturally more deferential to arrogant authority, although illegitimate, than the free men of the north would have been under like oppression, and consequently the new born states gradually accepted the colonization law after its promulgation, although it might well be suggested that they were under no obligation to do so.

Tornel, in his *Reseña Histórica*, p. 147, says that the restrictions of the colonization law were never observed (*jamas fueron observadas*) by the states, and he calls attention to what he characterizes "the exaggeration of the badly interpreted principle of the sovereignty of the states." (4 "Méjico," 135.)

New Mexico could not possibly be bound by the colonization law of 1824, unless by her own ratification:

1. The constitutional convention, called to form a government, could not *mero motu* divest New Mexico of her old *jus disponendi* of her public domain.
2. The "Mexican Empire" was extinct and repudiated and all its legislative proceedings annulled. Besides, while it existed as a *de facto* government, it

did not even attempt to revoke the powers of the provincial deputations, but, on the contrary, acknowledged "*las leyes rigentes.*"

3. The congress which, after installing Iturbide as emperor, was arbitrarily dispersed by him and finally reconvened, did nothing even pretending to impair the old provincial right of disposition of public lands.

4. The deputy for New Mexico elected by that provincee, either severally or in conjunction with the other members of the "internal state of the north," to the constitutional convention, under the project which expressly contemplated her inclusion in the list of "free, sovereign and independent states," had not a shadow of legal right, express or implied, to consent to her degradation into a mere "territory," by the decree of the sixth of July, 1824; nor, by the colonization law of the eighteenth of August, 1824, to consent to put her public lands under the control and disposition of the proposed confederacy.

5. Neither the Acta Constitutiva, nor the constitution of 1824, assumed to ratify all the proceedings of the constitutional convention, nor, specifically, the colonization law, which, from its very nature, was a premature statute and ought to have been postponed for consideration by the contemplated constitutional legislature.

In fact, New Mexico had not done or consented to anything equivalent to a ratification of the colonization law as early as the date of our grant, the third of March, 1825:

1. Although, by its terms, the colonization law went into effect in the several constitutional "states" immediately on its promulgation within their respective limits, and the states, by accepting its provisions and acting upon them, waived all objection to the

law, so far as their acquiescent legislatures could be deemed qualified to exercise so high a power in the absence of authority under state constitutions adopted with the consent of their electors, still, the law did not, even by its terms, become operative in New Mexico, until, by means of executive action, the "government" should provide for the colonization of the territories under its "principles," as well as duly promulgate the law and all regulations.

2. At the date of the colonization law, the "Executive Power," a triumvirate composed of Bravo, Victorio and Negrete, was the arbitrarily appointed executive authority of Mexico, and this alleged authority was not succeeded by the first constitutional president of the republic until the tenth of October, 1824 (4 "Méjico," 116). Neither of these executive authorities, non-constitutional or constitutional, framed any regulations under the colonization law, for extension of its "principles" into the territories, until the twenty-first of November, 1828 (*Hall*, § 487).

3. The lapse of upwards of four years, from the date of the passage of this pretended law to the twenty-first of November, 1828, during all of which period the provincial or territorial deputation, with or without the concurrence of the political chief, continued without question and with general acquiescence to exercise its old functions in the making of grants of public lands, is significant of the existence of a legal doubt as to the validity of the law itself, and it is equally significant of the sanction given by all authorities, federal and territorial, to the practices of the territorial functionaries in that regard.

Moreover, the colonization law was primarily designed to encourage foreign emigration into the "territories," as well as emigration from the more populous parts of Mexico to the sparsely populated

parts, and it did not profess to repeal or impair existing local granting functions. Nor, as we have shown, could it, in the circumstances attending its origin, have an abrogatory effect by implication, or even by express words, until afterwards duly sanctioned by the provinces affected. The fourth regulation of 1828 seems to treat the colonization law as non-exclusive of other laws, since it enjoins on the political chief to make or refuse grants "in strict conformity with the *law applicable* to the matter, especially with *that* of the eighteenth of August, 1824, already cited."

At all events, even if we adopt for the sake of argument the extravagant assumption that the law was valid in its inception, it could not operate in New Mexico until after its due promulgation. No attempt to promulgate it was made before the twenty-first of November, 1828, the date of the regulations, and it is very doubtful whether it was actually promulgated there until a considerable delay thereafter. Since no intent or purpose (or, we believe, right) existed to interfere with the customary granting powers of the local authorities, and they were acting with wisdom and fairness, there was no occasion to be precipitate in the promulgation. The law was not promulgated in the territory of Lower California until the twenty-fifth of February, 1830, and up to that time that local government, under its customs, granted lands by virtue of a special order of the Spanish visitor, Count de José de Galvez, made for that province on the twelfth of August, 1768 (*Hall*, § 213), as well as under its ancient powers (19 How. 343, *supra*). The failure of the authorities in New Mexico to take any notice of this pretended innovation in the making of grants prior to 1828, or to some later date, and the habitual granting of lands by them in the interim, under

their well settled customary powers, are strong evidence of the non-promulgation of any contrary law. (*Gonzales vs. Ross*, 120 U. S., page 605, *supra*; *ride etiam*, 19 How. 343, *supra*.)

Promulgation in all civil law countries, and especially in Spain and her dependencies, and the nations derived therefrom, has always been a very formal and serious proceeding, whose due occurrence was a condition precedent to the operation of a new law. (Eseriche, “*Promulgacion*;” 120 U. S., page 105, *supra*.) The same principle is, indeed, found in our common law in its application to the orders of the king of England, in council, relating to the government of his colonies. Such orders, whether original statutes or repealing statutes, did not bind the colonial authorities until due “notification,” *i. e.*, promulgation.

Albertson vs. Robeson, 1 Dallas, 9.

This case is cited by YEATES, J., in *Morgan vs. Stell*, 5 Binn. 318, where, in giving a more full statement of the facts, he said: “I well recollect that the decision gave general satisfaction to the profession.”

It is also cited in *People vs. Trinity Church*, 22 N. Y., page 50.

Even admitting that, in the course of events subsequent to 1825 tending to bring about general acquiescence in the assumption by the republic of ownership of the vacant public lands in the former provinces, it resulted that the Mexican states and territories thereafter lost even the right to challenge the government’s claim; nevertheless, the “principles of public law” demanded the maintenance of private titles, already accrued in good faith under the then unquestioned local administration, and always maintained by a long and unmolested claim

and possession. It is no answer to this proposition, to say, as does the court below, that the constitution of 1824 was in force in New Mexico in March, 1825 (*Transcript*, fol. 211), although, from the nature of that constitution — its provisions denying to New Mexico her promised standing as a “free, sovereign and independent” state—it may well be contended that it could not operate in New Mexico until fully accepted by unequivocal acts; because there was no provision therein upon the subject of public lands, or destructive of existing provincial powers over them. Powers not delegated to the general government might well be deemed reserved by its provincial factors. The disposition of public lands was internal or “interior” business, as it is under our government, where we have a “department of the interior” chiefly concerned in the administration of the public domain; and, as we have seen, the *Acta Constitutiva*, in reference to New Mexico, as well as the other provinces proposed as states of the confederacy, declared (art. 6; 1 White, 375) that the integral parts of the nation “are free, sovereign and independent states, in as far as regards exclusively *its internal administration*,” etc.

While this argument has been in course of printing we have had access to the treatise of Hon. Matthew G. Reynolds, one of the counsel for the government, referred to by the court in the Chaves case, *supra* (159 U. S., page 458), and containing a very useful compilation of many Spanish and Mexican laws, decrees, etc. In one or two places, however, we detect a perturbation of the historical spirit by forensic zeal. For instance, on page 41, after mentioning the unconstitutional and preposterous decrees of Santa Anna of the twenty-fifth of November, 1853 (*Ib.*, page 324) on the eve of his dictatorship, and of the seventh of July, 1854 (*Ib.*, page

326), when he was in the pretended exercise of that usurped authority, by the first of which, in the desire to levy political blackmail, he assumed to disavow all grants made in the states and territories without express authority from the general government, and to compel a revision of all titles claimed since September, 1821, although by the sixth article of the decree of the seventh of July, 1854, he did concede that grants in colonization were valid—the author of the treatise exalts that sinister tyrant as a Mexican Lycurgus. Yet Santa Anna was no more fitted to advise a Taney or a Grier in jurisprudence than to advise a Taylor or a Scott in strategy; and his arbitrary decrees fulminated upwards of five years after our treaty are not precedents of any persuasiveness whatever.

But these edicts of Santa Anna are well offset by those of the other “law-maker,” President Alvarez, who, by his decree of the third of December, 1855 (*Ib.* 329), repealed them “in all their parts,” and expressly declared (article 2) that “all the titles issued during that period [from September, 1821, to the time of those edicts] by the superior authorities of the states or territories under the federal system, by virtue of their *lawful faculties*, * * * in conformity with the existing laws [*leyes rigentes*] for the grant or alienation, respectively, shall for all time be good and valid, as well as those of any other property lawfully acquired, and in no case can they be subjected to new revision or ratification on the part of the government.”

The learned author was in error in supposing that this later “law-maker” meant to denounce all territorial grants except such as were made under the colonization law of 1824, for the only denunciation contained in the decree of the third of December, 1855, applied to alienations “without the

requisites referred to in the preceding article" [art. 2], and especially alienations within the littoral limit prescribed by article 4 of the colonization law, together with cases of forfeiture for breach of conditions, thus evidently intending to invoke the colonization law only when it had changed other "lawful faculties."

These shameless "decrees" of Santa Anna become grotesque and laughable when read in contrast with article 9 of his "Plan of Vera Cruz" of the sixth of December, 1822, by which he declared and guaranteed the continuance of the Spanish constitution and the existing laws. (4 "Méjico," 87.)

For his unlawful transgression of vested rights he was afterwards denounced and maledict in damages (Treatise, *supra*, 331), and so were his ministers and governors for their share in the iniquity. (*Ib.*)

Not only was the Antonio Chaves title good in its inception, under the laws, usages and customs *rei sita*, but it became confirmed by the law of prescription:

It is a "just title," even as was the title of Monica Pino, his wife, derived from him by conveyance (as we hereby offer to show, by an instrument to which both were parties, dated the twelfth of February, 1835, and recorded in book "F," page 142, of records of Soeorro county), because each took from a grantor claiming the right and power to grant, by instruments of title unequivocally purporting to grant an estate in fee (1 White, 345, 346).

It is a title in "good faith." This is expressly found by the Land Court (*manuscript*, fol. 209), and it is expressly so held by the political chief in his report to the provincial deputation (*Ib.*, fols. 15, 21), and it is otherwise so apparent in the conduct of the grantee, and afterwards of his wife and subsequent assigns.

"Good faith consists in the possessor of the thing believing that he is the owner thereof by having lawfully acquired it." (1 White, 346.)

It is a title supported by continued possession for upwards of seventy years, of which about twenty-four elapsed under the Mexican flag. (1 White, 346; 9 Pet., p. 760; 10 Pet., p. 662; 159 U. S., p. 464.)

The grantee and his wife were each competent to take and hold the land. (1 White, 346.) The claim and uninterrupted possession endured a sufficient length of time. The land, not only the parts expropriated from the towns of Socorro and Sevilleta, but all the rest, was subject to prescription.

Hon. Joseph M. White, author of the familiar compilation of Spanish and Mexican Land Laws, etc., when of counsel in the case of *Mitchel vs. United States*, 9 Pet. 711, made the successful argument. It appears as an appendix to the second volume of his published work. He there declared, in claiming that the title then under discussion was valid by prescription (2 White, 739; 9 Pet., *supra*):

"The Spanish government was bound by the knowledge of and consent to the purchase; and, by the Spanish law of prescription, the purchasers acquired a valid title by an uninterrupted possession, in good faith, for upwards of ten years, which period is sufficient when the parties are present, and the king was always present by his officers."

In its decision this court, taking the same view of the law, declared the prescriptive period to be ten years. (9 Pet. 761, *supra*.)

There can be no doubt that under the Spanish civil law, which was the law of Mexico, the maxim, *Nullum tempus occurrit regi*, while it protected the inalienable political rights of the king, such as the

right of taxation, the right to confer offices and dignities, and, generally, the sovereign right to govern, did not extend to possessory claims affecting the crown lands, since in them his interest was simply proprietary. Such lands might be lost to the crown under an "immemorial" prescription, or one of forty years' possession without documentary evidence. (*Vide* 1 White, 95, 349; 2 White, 736, 737, 739.)

Private rights of property held against the crown under the law of prescription were frequently acknowledged in royal cedulas and orders, as in the cedula of 1754.

(Reynolds, pages 47, 48, 49, 52; 1 White, 95, 96, 349.)

But when prescription was claimed under "just title"—that is, documentary color of title, especially such as involved adjudications of title by the king's notaries and tribunals, it appears that ten years was the period of prescription. (2 White, page 739; 9 Pet. 761, *supra*.) The title acquired by Monica Pino, the grantee's wife, under the Mexican law, involved an adjudication. (2 White, 733, 738, 739; 12 Pet., p. 435.)

While, under the law of presumption and the law of prescription, our title became definitively confirmed long before the Mexican cession, the subsequent lapse of time under our flag and constitution has added to it additional solemnity and sanction; for, in considering the effect of time in strengthening private land claims accompanied with possession, this court has always taken into account the efflux of time under American occupation of ceded territory. Thus, in *United States vs. Chares*, 159 U. S. 452, the grant adjudicated was made in 1835, so that the possession under Mexico continued only thirteen years, but the court said (*Ib.*, page 463):

* * * “But there is the weighty fact that for nearly sixty years the claimants and their ancestors have been in the undisturbed possession and enjoyment of this tract of land.” * * * (Page 464) “the strong presumption growing out of an exclusive and uninterrupted possession and enjoyment of more than half a century,” etc.

In *United States vs. Alviso*, 23 How. 318, the fourteen years’ possession regarded by the court included eight years elapsed since the treaty. In *United States vs. DeHaro’s Heirs*, 22 How., p. 298, the sixteen years’ possession which influenced the decision included thirteen years so elapsed.

In *Innerarity vs. Heirs of Mims*, 1 Ala. 660, the court said (*Ib.*, p. 671):

“The treaty of 1803, as well as that of 1819, by which the title of the United States was formally admitted by Spain to this territory, stipulated for the protection of private rights; and it would seem that full effect could not be given to these treaties, but by permitting the *prescription*, which had commenced while the country was under the dominion of Spain, to be completed afterwards.”

“The doctrine of presumption is as fully recognized in the civil as it is in the common law. It is a principle which no enlightened tribunal, in the search of truth and in applying facts to human affairs, can disregard.”

New Orleans vs. United States, 10 Pet., at page 721.

United States vs. Chares, 159 U. S., page 464.

Fletcher vs. Fuller, 120 U. S. 534.

Therefore, the civil law, like our common law, would, in proper cases, sustain titles by the fiction of a presumed lawful origin, even though the proof of a technical prescription might be deficient.

So that it is immaterial whether New Mexico in making the grant exercised an inherent governmental power, originating in the royal cedulas or ordinances, or in secret instructions to her old governors, from king, viceroy, audiencia, comandante or inspector, or in the decrees of the cortes—all these legal factors, as interpreted by her, becoming part of her autonomie being after the revolution by virtue of custom and usage—or whether she acted as the instrumentality of the republic, under legislative and executive instructions, express or implied. In neither case is this court called on to pursue an investigation of the dark and mazy recesses of Spanish and Mexican policy and caprice, in the doubtful search for data to aid the formulation of a specific theory of the precise origin of the title. The legal presumption deducible from the established facts supplies the place of all theories. That presumption covers the whole title and every part of the tract of land to which it relates, and invokes in its support whatever quality or quantity of governmental power could "by any possibility" be necessary to confer such a title. It invokes whatever inherent power resided in New Mexico as a province or territory, and it invokes equally whatever inherent power resided in the republic. It is not limited by any consideration of the power which might have been vested in the Mexican executive, or in any other official depositary of special authority, but it comprehends the Mexican legislative and judicial powers as well. On the same principle, an act of Parliament has been presumed (Best, Evidence, § 393; 2 Wharton, Evidence, § 1348), it being unimportant whether

or not the archives or the printed volumes preserved any evidence of such an enactment; and there is nothing in the bloody, blurred and incoherent history of Mexico to exempt her political or legislative doings from an equivalent presumption. (*Fletcher vs. Fuller*, 120 U. S. 534; *United States vs. Chaves*, 159 U. S. 452.)

Venerable landed possessions, whether claimed and possessed by the aborigines, or by a civilized monarch, or by an humble peasant, become actual facts of legal cognizance, however mysterious their evolution from the unknown. In respect of many Spanish and Mexican titles, as of many titles to lands in other continental countries and in the British Isles, it is mere matter of speculation to theorize as to their birth. The German Empire would hardly inquire into the primary grounds of private possessions in Alsace and Lorraine. A nebular hypothesis may do as well as any other. But whatever the theory suggested as to the beginning of so meritorious a claim and possession as ours, the final outcome is a title which, under the law of nations, the laws, usages and customs of Spain and Mexico, the stipulations of the treaty and the dictates of national honor, must be held complete and perfect.

In its adjudication, the court, in view of all the facts and circumstances, is in duty bound to invoke such a beneficial presumption *that what ought to have been was*, as upon the familiar doctrine applicable in such cases will supply the place of all missing links, if any, in our muniments; especially because the great lapse of time has made such a presumption just, equitable and imperative.

Conclusion.

If Antonio Chaves and his wife, still owning their grant, had lived until to-day and, weighed down with a hundred years, had come into this court with their title as we have proved it, and prayed the court to confirm them in their life-long possession of the granted tract, would the court have dismissed them, landless and penniless? The present claimant and his mortgage creditors come into court accredited with all the title, equity, and possession which the grantee and his wife would have had in the case supposed, and even with additional claims to political and judicial consideration; for, on the faith of the title and of its favorable mention by the secretary of the interior, the commissioner of the General Land Office, and the committees of the house of representatives (Ex. Doe, No. 149, 43rd congress, 1st session; Report No. 1501, 47th congress, 1st session; House Bill 5691; secretary's letter of fifteenth of May, 1882; commissioner's letter of ninth of May, 1882; favorable report of committee ordered to be printed the twentieth of June, 1882) as well as on the faith of the confirmation by congress of similar titles, they have made large expenditures, exceeding, with interest, the sum of one hundred thousand dollars, in the purchase and protection of the property. Nor are they to be prejudiced because the lands which they have acquired are now sufficiently valuable to excite the cupidity of the covetous, or the misconduct of the lawless, although in 1825 their value was only nominal.

As was said by Mr. Justice BALDWIN, in *Strother vs. Lucas*, 12 Pet., page 447, with reference to old St. Louis titles, "what would now be a splendid fortune, would not, fifty years ago, be worth the clerk's fee for writing the deed which conveyed it, and was, therefore, passed from hand to hand by

parol, with less formality than the sale of a beaver skin, which a bunch of wampum would buy. The simple settlers of St. Louis then little thought that the time would ever come when, under a stranger government, the sales of their poor possessions, made in the hall of the government, at the church door after high mass, entered on the public archives as enduring records of the most solemn transactions, would ever be questioned by strict rules of law or evidence."

The proud judicial spirit which was thus expressed was again manifested by the court in the case of *United States vs. Sutherland*, 19 How. 363, wherein it said:

"In construing grants of land in California, made under the Spanish or Mexican authorities, we must take into view the state of the country and the policy of the government. The population of California before its transfer to the United States was very sparse, consisting chiefly of a few military posts and some inconsiderable villages. The millions of acres of land around them, with the exception of a mission or a *rancho* on some favored spot, were uninhabited and uncultivated. It was the interest and the policy of the king of Spain, and afterwards of the Mexican government, to make liberal grants of these lands to those who would engage to colonize or settle upon them. Where land is plenty and labor scarce, pasturage and raising of cattle promised the greatest reward with the least labor. Hence, persons who established *ranchos* required and readily received grants of large tracts of country as a range for pasturage for their numerous herds. Under such circumstances, land was not estimated by acres or arpents. A square league, or *sitio de ganado mayor*, appears to have been the only unit in estimating the superficies of land. * * *

To those who deal out land by the acre, such monuments as hills, mountains, etc., though fixed, would appear rather as vague and uncertain boundary calls. But, when land had no value, and the unit of measurement was a league, such monuments were considered to be sufficiently certain. Since this country has become a part of the United States, these extensive *rancho* grants, which then had little value, have now become very large and very valuable estates. They have been denounced as ‘enormous monopolies, princedoms,’ etc., and this court have been urged to deny to the grantees, what it is assumed the former governments have too liberally and lavishly granted. This rhetoric might have a just influence, when urged to those who have a right to give or refuse. But the United States have bound themselves by a treaty to acknowledge and protect all *bona fide* titles granted by the previous government; and this court have no discretion to enlarge or curtail such grants, to suit our own sense of property or defeat just claims, however extensive, by stringent technical rules of construction, to which they were not originally subjected.”

Therefore, we pray the court, in reversing the decision of the divided court below, to pass a decree confirming the Antonio Chaves grant, as a complete and perfect title under the laws of Mexico and under the treaty of Guadalupe Hidalgo, with its boundaries as they appear on its provisional survey by the United States, and thereupon to remand the cause for further proceedings, in respect of survey and patent, conformable to the statute.

Respectfully submitted,

JNO. H. KNAEBEL,
Counsel for the Appellant.

In the Supreme Court of the United States.

MARTIN B. HAYS, APPELLANT,
v.
THE UNITED STATES. } No. 186.

STATEMENT, BRIEF, AND ARGUMENT.

This suit was instituted in the Court of Private Land Claims on the 24th day of September, 1892, by Martin B. Hays, claiming to be the owner by purchase of what is commonly called the Alamillo or Antonio Chavez land grant, situate in the county of Socorro and Territory of New Mexico. To sustain the claim, plaintiff relied on mesne conveyances and original title papers from the Mexican Government to one Antonio Chavez. These papers in Spanish are found in the record (pp. 7-11), immediately followed by translations thereof (pp. 11-14).

It appears from these title papers that one Antonio Chavez, a citizen of the Republic of Mexico, and resident of the province of New Mexico, stated that he found himself very much crowded in the possession of his property and appurtenances, as well in the pasturing of his stock as in the extension of agriculture; and desiring

to move to another place of greater capacity, for the purpose of enlarging his business of stock raising and agriculture, he asked that there should be assigned and adjudged to him the tract called the San Lorenzo Arroyo, and he describes the boundaries of said tract as follows:

On the south the ranch of Pablo Garcia, on the north the little table-land of the Alamillo, on the east or west the Jara (Willow) Spring, on the west or east the river known as the Del Norte; stating also that the land referred to was so uninviting, uncultivated, desolate, and bleak that he believed that no obstacle existed to the granting of the same; stating also that by the same he would contribute by cultivation and improvement to the benefit and security of the surrounding individuals, and that there would result to the province a great assistance and relief, inasmuch as at this point would be prevented the incursions, ambushes, and assaults of the enemies to the quiet and peace of the community, and that it would stop the exportation, deterioration, and decrease of the live stock which said enemies had left with the inhabitants, closing the prayer in the usual form. (Rec., 11.)

This petition was directed and delivered to the secretary of the most excellent provincial deputation of Santa Fe, of New Mexico. The petition bears no date, but on the third day of February, 1825, being the sixteenth day of the session of the provincial deputation, the petition was taken up by said provincial deputation and it was ordered that the document should be passed to the political chief of the Territory, in order that he may report whether the land petitioned for pertained to that of the

settlements of Socorro and Sevilleta, and, if so, whether it might not, on account of their great extent, be granted to the petitioner without injury to third parties. (Rec., 12.)

On the 25th of February, 1825, a report was made by Bartolomé Baca, the political chief of the Territory at the time, in which he says :

It is certain that the application of Antonio Chavez, a resident of Belem, refers to a part of the tract of Socorro, and a portion of that which belongs to Sebilleto, but it is also certain that, on account of the great extent of both tracts and it being where their possessions separate, far from being injurious to those settlements, there results to them a benefit, for the reasons which I will proceed to state, as follows : The first and most important is the increase of the population to such a degree that it will afford means to the said settlements of Socorro and Sebilleto by guarding a portion of the entrances and exits of the savages, who, though at peace, come to rob, as those at war endeavor to harass the same settlements or those surrounding or near them. The second, that to the residents of the said new settlements there remain most ample lands for pastures, fields, uses, and transit, so that the land which may be granted to Chavez will cause them not the least scarcity, as on another occasion that granted to Sabinal did not to Belem, or even to Sebilleto itself, though it was an appurtenance of the first. The third, that making to the said Chavez the grant that he asks would produce the emulation desired, so that the desirable vacant lands of the Bosque del Apache and San Pasqual may be settled, which lands upon the one and the other bank present the greatest advantages to stock raisers and farmers; for, although they may have lands in the center of other settlements, these, from

their age, are full of locusts and worn out by constant cultivation. Fourth. That the petition of Antonio Chavez has in it more of necessity than of affectation or covetousness, inasmuch as from that individual the Navajo tribe has taken the greater part of his live stock, and he requires a tract from which, through its productiveness, to reestablish himself from the losses he has suffered during the war with the said tribe. Fifth. That the slightest damage not resulting to Socorro and Sebilleta from the grant which Chavez asks, it is very probable that the people there, for their poverty is well known, will have a place where they may get employment which may furnish them subsistence, and which (like their neighbors, who are subject to the same almost deplorable condition) they lack. (Rec., 12.)

For all of which reasons it was shown that the petition of Chavez should be acceded to at once, and to which the people of the settlements mentioned would make no objection, etc. (Rec., 13.)

On the 5th of March, 1825, the report of Bartolomé Baca having been called up in the provincial deputation, together with that of one Pedro José Perea, it was resolved that there be adjudged to the two individuals mentioned the land asked for, filing in the office of the secretary of the honorable provincial deputation the original *expedientes*, as is provided, ordered, and customary in similar cases, and furnishing the parties interested the corresponding *testimonio*, which will serve as title, and with which Antonio Chavez will present himself to the alcalde of Socorro, that he may place him in possession. (Rec., 13.)

On the 20th of April, 1825, Antonio Chavez having presented the *testimonio* of the proceedings theretofore had by the provincial deputation to Juan Francisco Baca, the constitutional alcalde of the jurisdiction of Socorro, said Baca proceeded to place Chavez in possession of the property conceded by the provincial deputation, and after the usual formalities declared the boundaries to be: On the north, where the small tableland of the Alamillo begins; on the east, the Del Norte River; on the south, a small forked cedar tree in the middle of the bend of the Pablo Garcia ranch, commonly so called, this little cedar being on the same side with the main road which is traveled toward Socorro, on the side of the meadow; on the west, the spring known as the Jara (Willow) Spring. The document was executed and delivered to Antonio Chavez. (Rec., 14.)

In October, 1850, the property was conveyed by the widow of Antonio Chavez to Rafael Luna, Anastacio Gareillo, and Ramon Luna.

No question was raised as to the genuineness of the original title papers. It was contended on behalf of the Government that no such possession and cultivation of the property as was evidently intended, judging from the title papers, was ever performed prior to the treaty; that the west boundary of the grant, as claimed at the present time, is incorrect, and many miles farther west and north than the real west boundary; that at the time the alleged grant was made the provincial deputation had no power or authority to make the same, and in attempting to do so its acts were void and without effect, and

consequently did not bind the Mexican Government and does not bind the United States.

On the trial of the cause, the plaintiff introduced as a witness Elias Brevourt, who stated that he had lived in the Territory since 1850; that he had known Anastacio Garcia first in 1858, at which time he was living at Alamillo, and that he claimed the grant and was living on it. (Rec., 24.)

The plaintiff was sworn in his own behalf, and stated that he first saw the grant in 1873, and that Anastacio Garcia, who claimed to own a third, was living on it; that Ramon Luna's heirs and Rafael Luna claimed to own the other two-thirds. He knew Anastacio Garcia very well. That he (plaintiff) owns an interest in the grant, and acquired title through Bond, Higgins, and Arms. He also testified:

Q. Do you know the boundaries of the grant?

A. Those that are relied on in the papers, I do, and have been to them all, pointed out and located on the earth's surface. I protested against this survey and had it resurveyed, and changed the boundaries after the title passed to me. (Rec., 26.)

This closed the case in chief for the plaintiff.

Jose Antonio Baea, a witness on behalf of the Government, testified that his full name was Jose Antonio Baea y Pino, and that he would be 80 years old in June; that he had lived in Socorro and that immediate vicinity all his life; that Juan Francisco Baea was his brother, and that he had held the position of alcalde in that community. He knew the Antonio Chavez grant; had been over it and knew the springs on it; that there were two

springs on it, the Ojo de la Xinsa and the Ojo de la Jara (Willow Spring); that the spring formerly called Ojo de la Jara is now known by the name of Ariveche, and he thinks since about the year 1848, the name being changed then because a man by the name of Ariveche had been killed there about that time. He stated that when he was a young man this same spring was known as the Ojo de la Jara (Willow Spring) because of the great quantity of willows that grew around it.

The other spring to the south is called the Ojo de la Xinsa. He stated, when asked as to the cultivation of the grant, that he never knew of it being cultivated; that the ditch from the river, under which cultivation took place, was made by the Lunas and Garcias, and that there was never any cultivation of the grant until they took the *acequia* out. He knew that Antonio Chavez lived at Belen, and that he died at Sabinal; that he never lived on the grant, but he had a cattle ranch there, which was down close to the river. The witness stated that he had occupied the positions of constitutional alcalde, justice of the peace, clerk and secretary of the *ayuntamiento*, probate judge, and several other official positions; that when he was a boy the people would never go beyond the mountains, because of the Indians, and when they made excursions after the Indians they would go as far as the La Xinsa and La Jara springs and return. He stated that he never knew of people going west of the Bear Mountains to find the La Jara Spring until a very recent date, as it was in the Navajo country (in La Galina). This was substantially the testimony of the witness. (Rec., 26-31).

Cayetano Tafoya, a witness on behalf of the Government, testified that he lived at Polvareda and was about 66 or 67 years old; that he was born there, and knew Anastacio Gareia in his lifetime, and, when quite young, he knew Antonio Chavez and also Juan Francisco Baca; that he knew where the Antonio Chavez grant was, and knew the springs on the grant, and that they were now called—one San Lorenzo, another Ariveche, and another La Xinsa; that the one now called Ariveche was formerly called Ojo de la Jara (Willow Spring); that he had been there while it was called by that name (Ojo de la Jara); that the name of the spring was changed because a man had been killed there by the name of Ariveche. As to the cultivation, he said that at the spring La Xinsa the purchaser cultivated a small patch, and that the first cultivation he knew of on the Rio Grande was after the irrigating ditch, now called the Alamillo, had been dug by himself for Rafael Luna, Ramon Luna, and Anastacio Gareia, and that prior to the digging of this ditch there was no cultivation on the river; that there was no cultivation on the grant prior to this time and the grant was not occupied by any one; that he had been over the tract of land west in scouting expeditions after the Indians, and that he never heard of the spring beyond the Bear Mountains called the Ojo de la Jara (Willow Spring).

On cross-examination he stated that he had been at the cattle ranch on the grant occupied by Antonio Chavez, and that he heard that Chavez had transferred the possession of the grant to Gareia and the Lunas, and he

knew Garcia had lived on the grant; that it was customary in that country for herders to pasture their stock wherever grazing and water could be obtained, and that they pastured from San Lorenzo below to the side of the river, but he said that he had not seen a map of the grant until the morning he testified. He stated that he knew Garcia claimed the boundary on the east to be the Rio Grande River and on the west the Ojo de la Jara, but he declined to say it was the La Jara in the Oso (Bear) Mountains. He did not know the spring in the Bear Mountains. He had seen Chavez pasture stock on the grant next to the river; that the section of country was overrun by the Indians. (Rec., 32-35.)

L. M. Brown, a witness on behalf of the Government, testified that he lives at Socorro, and was United States deputy surveyor; had examined the topography of the country of what is called the Antonio Chavez or Arroyo de San Lorenzo grant more than once, and had occasion to make a topographical survey of it; had examined it recently in connection with the two witnesses, Antonio Baca and Cayetano Tafoya; that he knew the location of the various springs upon the grant; knew the location of the La Xinsa, the Ariveche, and the La Jara Spring, in the Bear Mountains; also the arroyos of San Lorenzo and Salado and the location of the Bear Mountains. The witness then testifies from the map which is shown in the record (Rec., 12), and locates the various springs and their relative positions and distances apart. He stated that at the spring now called Ariveche there is a quantity of willows; that he has been to the spring that is

now designated the northwest boundary corner of the grant, and that there are a few willows at that spring, but a great many more willows at the Ariveche Spring than at the La Jara Spring in the Bear Mountains—five times as many.

As to the present state of cultivations of the grant, he stated that there were some Americans who had farms there, claiming it as Government land; there may be in cultivation along the river probably 175 acres, and at La Xinsa Spring probably 10 acres; that west of the river was put in cultivation during the last six years. He has known the grant since 1881, but all the cultivation west of the river has been since he knew it. He stated he had made a topographical map of the grant for Mr. H. M. Bond at the time he purchased an interest in the grant, and that he ran to La-Jara Spring as indicated in the former Government survey; that he followed that survey but did not find the monuments as laid down there, but that he did find the La Jara (Willow) Spring at the northwest corner of the survey formerly made; that he did not know of the time that an error had been made in selecting that spring as the west boundary. He stated to Judge Bond that he found a mistake of a quarter of a mile in the survey. He stated that the La Jara Spring at the northwest corner of the grant is not the only one on the grant known by that name, for aside from the two witnesses, Baea and Tafoya, he has heard other people speak of it by that name in a general way; that at the time he made the survey, he knew of two La Jara (Willow) Springs, but did not know of the

location of one of them, and he was only sent out to retrace the Government survey; that at the time he made the survey for Judge Bond, the La Jara at the northwest corner was the only one he knew of in relation to the grant; after getting through with the survey he turned it over to Judge Bond. (Rec., 36-38.)

The Government then offered the testimony of Juan Francisco Baena, the alcalde who delivered possession of the grant to Antonio Chavez (Rec., 17, 108), taken before the surveyor-general of the Territory, who testified that he was 85 years old in August, 1873; that he knew of the sitio of Alamillo or Arroyo of San Lorenzo, and had known it since 1815 or 1816, and that it was granted to Antonio Chavez; that he was constitutional alcalde, and the departmental deputation sent him an order to place Chavez in possession of the sitio about the year 1822, but he is not certain of the date; that it was bounded on the north by the Mesita del Alamillo, where it leaves the river, on the east by the Rio del Norte, on the south by the ranch of Pablo Garcia, the line running toward a forked cedar tree about a mile and a half from the river. He does not remember the western boundary. He stated that Antonio Chavez took possession of it and kept it until his death, but his heirs sold it to Anastacio Garcia and the Lunas, and they have occupied it up to that time.

The deposition of Hiram G. Bond was read in evidence by the plaintiff, and consists principally of testimony as to the representations made to him by Anastacio Garcia at the time he purchased the grant. As this

purchase was not made until 1873, and the Government is in no way bound by the representations made by the vendor to the purchaser, it is not deemed necessary to abstract the deposition.

Melquiades Luna, a witness on behalf of the Government, testified, by leave of court, that he was 35 years old, and lived at Socorro; that he is the son of Rafael Luna, and has lived at Socorro for thirteen years; he was acquainted with a tract of land lying north of Socorro, called the Antonio Chavez grant, and has known it for thirty years; been over it a little. He did not know whether he had ever heard of stock on the grant or not; had railed on what they called the Carbon Piedra, near Santa Rita. Knows the names of the springs on the grant; they are La Jara or Ariveche, Lorenzo, and another spring. Never heard his father say anything about the boundaries of the grant, or heard him mention the names of the springs. Knew Anastacio Garcia in his lifetime; knew that he was one of the owners of the grant, and had conversed with him about the lines during his lifetime; had heard him say what the west boundary of the grant was, and that the Ariveche Spring was the west boundary; was there at the grant at the time, and that was in 1883. The Ariveche Spring is a little north from La Xinsa. Knows that there is a Willow (La Jara) Spring lying west of the Santa Rita, and knows that it is now called La Jara; that there are some willows at the present Ariveche Spring.

On cross-examination witness stated that he sold his interest in the grant to Jose Maria Luna. At the time

he had his conversation with Anastacio Garcia they were out rounding up cattle about 8 miles from La Xinsa; he had ranched there two years, but did not know whether it was on the grant or not; that his ranch was 6 or 8 miles west of the Arroyo Ariveehe. (Rec., 50-56.)

Ethan W. Eaton, a witness on behalf of the Government, testified that he was 66 years old, lived in Socorro, and had lived in the Territory since 1849; knew where the Antonio Chavez land grant was situated; knew Anastacio Garcia in his lifetime; had a conversation with Garcia with reference to the boundaries of this grant somewhere about the time the grant was sold or bargained for; and as to the boundaries Mr. Garcia stated on various occasions that they were attempting to survey more land than they had sold. The matter came up several times, but being of no particular interest to him he did not inquire into it; that the conversation came up on account of the points to which the Government survey was made, and he remembered one point because it was mentioned frequently, and that was that the Ojo de la Jara that they were claiming as the northwest corner of the grant was not the Ojo de la Jara that was intended in the grant. (Rec., 56.)

Luciano Chavez, a witness on behalf of the Government, testified that he was 49 years of age and lived at Polyadura, in Socorro County, and knew Anastacio Garcia in his lifetime; knew Martin B. Hays, the claimant for the grant; knew him about seventeen or eighteen years ago; saw him first at his (witness') house; he came with Anastacio Garcia and two witnesses to ask him to swear

with reference to some statements with reference to the lines of the Pablo Garcia ranch; they were Pablo Chavez and Antonio Garcia; witness was a justice of the peace at the time. He took the affidavits of several witnesses for Garcia and Hays; took the affidavits of Rumaldo Chavez and Francisco Chavez y Marques for Garcia and Hays; had a conversation with Rumaldo Chavez and Anastacio Garcia at the time about the west boundary of the grant; after the witnesses had stated under oath what the line of the Pablo Garcia ranch was, Hays and Anastacio Garcia went away.

When they came back a conversation took place between Rumaldo Chavez, witness, and others. The conversation was that Rumaldo Chavez stated his father told him that about 1828 or 1830 the grant of Antonio Chavez was made; that the grant was from the spring that we this day call Ariveche, and from that place east to the river; and then Rumaldo Chavez asked him how it was that they state beyond this plain is the La Jara; and then the father of Rumaldo Chavez said they wanted to steal this and rob this, and they were at the Ariveche, and his father said that this place where they were was the Ojo d^e la Jara; it has been known by that name from all time till Ariveche was killed; before that time it was known as the Ojo de la Jara; at this time Don Anastacio Garcia came into the room where they were and heard the conversation, and said to Don Rumaldo Chavez, "Shut up your mouth," and Mr. Chavez did so. Could not state whether Hays was present in the room or not, but he was about somewhere. Witness was shown, on cross-examination, the depositions

taken by him of Rumaldo Chavez and Francisco Chavez y Marquez, and recognized them as being in his handwriting. (Rec., 57-59.)

In rebuttal, plaintiff offered in evidence the affidavits filed before the surveyor-general of Rumaldo Chavez (Rec., 109, 110), in which he testifies as to the boundaries of the grant, and that La Jara Spring, the west boundary, was about 30 miles from the Rio Grande, more or less, and of Francisco Chavez y Marquez, who testified that he has known the San Lorenzo Alamillo grant for forty years, but does not know the location of the La Jara Spring, which formed the west boundary of the grant.

Pablo Padilla, a witness on behalf of the plaintiff, testified in rebuttal that he was 57 years old and had lived at Polyadera all his life; knew Antonio Chavez and knew of his land grant; it extended to the La Jara Spring; knew the Ojo de la Jara, which was on the west boundary of the grant; had seen it often, and it lies west of the Bear Mountains; knew the arroyo of the same name near the spring; that at said spring there was some rushes and willows; that the first time he knew it was in 1862; there were willows on both sides of it; knew Anastacio Garcia well. He was asked if he knew the land claimed and occupied as the Antonio Chavez grant, and replied: "Yes; I have not seen it personally, but I have known that they claimed it as far as La Jara." Knew the land since 1862; had heard of a man named Ariveche, but did not know him personally; in the year 1858 witness was camping with his father at the Ojo de la Xinsa, and went with his father about a mile farther north, who told him that that

was the Cañada Ariveche, where a man of that name had been killed, and that he had always from a boy heard that cañada called by that name until a short time ago, when he had heard the term La Jara applied to it; that in the Cañada Ariveche there is a good deal of wood (*palo blanco*); does not know of a spring being in the Cañada Ariveche.

On cross-examination witness testified that he knew the Ojo de la Jara in 1862, and that it was in the Navajo country beyond the Bear Mountains; witness was unable to state by what name the Arroyo Ariveche was known before the man was killed there; he knew it by the name of Cañada Ariveche since the year 1858; did not know what it was called before; says his father stated to him that it got its present name from a sheepherder being killed there; had been out very frequently since 1858 after Indians; was at La Jara spring in 1862 in pursuit of the Indians. (Rec., 59-63.)

Nepomoceno Aragon, a witness on behalf of the plaintiff, testified in rebuttal, that he lives at Polvareda and does not know how old he is; is a relative of Luciano Chavez; knew the Antonio Chavez grant; it was south from the Cebolleta; knew Anastacio Garcia in his lifetime, and knew from reputation what the west boundary of the grant was, but had never been to it; it was called the La Jara Spring; he had known it since 1862; that it is northwest of the Bear Mountains; when he first knew it there were a good many willows around it; knew the Arroyo Ariveche also; knew the spring in that arroyo, which is this day called the Ariveche Spring, because he had heard it stated that a man by the name

of Ariveche had herded sheep there; says there are no willows there around the spring, at least he has not seen any; knew the spring in the Cañada Ariveche since 1857 or 1858 and there were never any willows there; knows the Cañada Ariveche from the spring to its mouth.

On cross-examination, he stated that he knew how the Cañada Ariveche got its name, and it was because a man of that name had herded sheep there, and that there was no other water in that country except in that Cañada; knows where La Xinsa is; did not know whether Ariveche was ever known by any other name; does not know whether Ariveche got its name on account of a man being killed there, and did not know it ever had any other name; never heard anybody say that it had a name prior to Ariveche herding sheep there; says there are no willows there; was herding at the spring west of the Bear Mountains about four years ago.

Pablo Sanchez, a witness on behalf of the plaintiff, testified in rebuttal that he is 55 years of age, lives at Polvadera, and has lived there since 1851; knows the land called the Antonio Chavez grant; has seen the map; knows the western boundary of the grant; says it is from the Ojo de la Jara in the direction to the Pueblo Spring; has often been at the La Jara Spring at the western end of the Antonio Chavez grant; been there many times, but does not remember how many; the spring is north of the Bear Mountains, where the Cerro del Oso begins; knows the La Jara Arroyo west of the Ojo and knows the mountain of La Jara; the first time he saw the spring there were some willows growing there, some oaks, some cedars,

and other woods, a grove, and there were many willows; saw the spring about a year ago, there were not then as many willows as formerly, because stock had destroyed them; knows the Cañada Ariveche, and knows the spring that people call the Ojo del Ariveche; first knew of it in about 1854 or 1855; said there was not much water in it. (Rec., 68-74.)

Jesus Baca, a witness on behalf of the plaintiff, testified in rebuttal; testified that he was 75 years old and lives at Sabinal; knew Antonio Chavez; he was the master of the witness; Chavez lived at Belen; witness was the chief herdsman of Antonio Chavez and there were seven with himself and fourteen in all. They were all armed on account of the Navajoes; during the time he was a herder and when he became a corporal of the herders he was shown the boundaries of the ranch of Alamillo; that the Ojo de la Jara is on the north of the Cerro del Oso; that the arroyo and spring are about $2\frac{1}{2}$ miles from Santa Rita, from the north to the west from Santa Rita; when he first knew it it was very thick with willows. Knew the cañada called the Cañada Ariveche, and had known it for twenty years; it was called by that name because a man was killed there of that name about twenty-two years ago; he was an Apache; that before Ariveche was killed the shepherd boys called the spring, which is inside the Antonio Chavez grant, Chupidero, because the quantity of water there was very small and only sufficient to be taken and put in barrels, and not sufficient to water burros. It was never called La Jara; that there never had been any willows there and never would be; was in the employ of Antonio Chavez eight years and nine months; that

twenty-five years after he left the employ of Antonio Chavez this man Ariveche was killed: he and his fellow-herders defended the grant against the Indians and Spanish. In cross-examination the witness stated that he had herded sheep all over the grant; had herded in the Cañada Ariveche and at the spring called Chupidero. He stated as follows:

Q. You used to herd the sheep out in the Ariveche Cañada, didn't you?

A. In those days there was no Ariveche; it was the Cañada of Don Antonio, and he had a right there.

Q. What did he call it before then?

A. The Cañada.

Q. That was the only cañada on the grant, was it?

A. Yes; he gave it the name of Ariveche after he was speared with arrows.

Q. There are no other cañadas on the grant?

A. There are very many of them.

Q. They didn't have any names, did they?

A. They have various names.

Q. Will you give them?

A. Yes; Ojo de la Jara first, Rancho del Chado, Rancho de la Trejo, Ojo del Oso, La Cañada del Agua, Padero Babijuilla. I am stating the cañadas that had water.

In pasturing stock, witness stated he had pastured as far as Las Cruces on the riverside and as far as the Rio Grande, and had pastured clear on to the river Pecos, and that they were not confined to any land grant. (Rec., 74-79.)

The plaintiff was called in his own behalf, and testified that Anastacio Garcia never said in his presence or hearing that the boundary of the Antonio Chavez grant on

the west was the spring called the Ariveche, or any other spring in that community ; that he never had anything to do with fixing the Ojo de la Jara on the western side of the grant. Witness remembers meeting Anastacio Garcia and other Mexicans at the house of Luciano Chavez seventeen or eighteen years ago. He was out there at the time, probably in 1878, upon a resurvey being ordered of the grant. He called the surveyors out to establish the southeast corner of the Pablo Garcia ranch. There was no discussion about the Ojo de la Jara Spring. He first entered into negotiations for the purchase of the grant with Anastacio Garcia and Rafael Luna, and met Anastacio Garcia at his house a number of times. He remembered on one occasion asking Anastacio Garcia how far it was to the La Jara Spring, and he said, "Poniente," and pointed to the west, right where it is located in the Bear Mountains. He said it took a day's ride on a mule to go to it, but did not know anything about miles. Witness had been in the vicinity of the Ojo de la Jara a number of times. It is quite a good spring, with a large growth of willows. Went on the grant first in 1873; and purchased it in 1873 or 1874. The grant was not surveyed at the time. Never heard of any Ojo de la Jara Spring except in the Bear Mountains ; never heard of the Cañada Ariveche.

It may be remarked here that every witness that the plaintiff and the Government has introduced has identified the Cañada Ariveche, and Mr. Hays has been the owner of the grant since 1874; has been over it twenty-five or thirty times; has surveyed it at his own expense and twice at the expense of the Government, and has

never heard of the Cañada Ariveche. It is therefore deemed unnecessary to abstract his testimony further. It will be found in the record (pp. 79-86).

L. M. Brown was recalled on behalf of the Government for the purpose of contradicting the testimony of Pablo Sanchez on behalf of the plaintiff.

Luciano Chavez was recalled on behalf of the Government and testified that he knows the Ariveche Spring situated on the grant, and has known it since 1853, 1854, or 1855; was out there with his grandfather; that there were plenty of willows there then, but they have since been eaten down by cattle; has known the Ariveche Spring by another name, La Jarito or La Jara (Willow); knows also the Lorenzo; there is a much larger growth of willows around the Ariveche than at Lorenzo, and about four times as much water; as many as two thousand sheep had been watered in the Canada Ariveche. (Rec. 87-88.)

This is all the testimony in the case.

BRIEF AND ARGUMENT.

1. The grant is void for want of authority in the provincial deputation to make the same.
2. The action of the provincial deputation upon the report of the governor, made at its request, was without warrant or authority of law, and void.
3. Between August 18, 1824, and November 25, 1828, there was no provincial official or official body authorized to dispose of the public lands of the Republic of Mexico.
4. The grant should be rejected for failure on the part of the original grantee to comply with the promises made

in his petition, and the requirements of settlement and cultivation.

5. If the grant is a valid grant, the west boundary is incorrectly located by the plaintiff.

It was said by this court in the case of *United States v. Vallejo* (1 Black, 541) that "the decree of the Spanish Cortes of 1813, as well as all other laws of Spain in relation to the disposition of Crown lands, were inapplicable to the state of things which existed in Mexico after the revolution of 1820, and could not have continued in force there unless expressly recognized by the Mexican Congress." I have not been able, in my investigation of these questions, to discover a continuation of the former laws subsequent to the declaration of independence on the 22d of February, 1821, at Dolores. It is true that in 1820 King Ferdinand reestablished the constitution of 1812 for the government of Mexico, but upon independence, and after the Regency had been overthrown by Iturbide and the promulgation, on the 4th day of January, 1823, of the imperial colonization law, it must have necessarily followed that the former laws for the disposition of the public lands were by that act repealed. This law, on April 11, 1823, after the abdication of Iturbide, was also repealed, and the repealing act of the succeeding provisional government stated specifically that it was repealed and suspended *until a new resolution on the subject could be enacted*. So that it is quite clear that on April 11, 1823, there was no general law of Mexico for the disposition of the public lands. It is true that the national government could have provided for the disposition of the same, but it seems that nothing was done

in respect to these matters until August 18, 1824, when what is known as the colonization law of Mexico was promulgated (Reynolds, 121). The sixteenth article of this law is as follows:

The Government, under the principles established in this law, shall proceed to colonize the Territories of the Republic.

It does not seem that the executive branch of the Government took any steps to carry into execution the powers conferred by this article of the colonization law until November 21, 1828, when a very complete system of regulations was promulgated, conferring authority upon the governors of the Territories, with the approval of the Territorial deputations, to grant the public lands subject to the restrictions imposed by the colonization law under which the regulations were issued. The twelfth article of the colonization law (Reynolds, 122) limits the amount of land that may be united as property in the hands of a single individual, and has been commonly called the "Eleven-league" clause. This grant, then, even if it could have been made under the provisions of the colonization law of August 1, 1824, is in conflict with this section; and, as has been decided by this court, this law was a limitation upon the powers of the governor, and he could not have united in the hands of Antonia Chavez more than 11 leagues of land; yet, according to the preliminary survey made under the act of July 22, 1854, the grant includes over 138,000 acres.

It has been held, in the case of *United States v. Vallejo* (1 Black, 541), and in *United States v. Vigil* (13 Wallace, 449), that the only law regulating the disposition of the

public lands in the Territories subsequent to independence was the law of August 18, 1824, and the executive regulations promulgated thereunder of November 21, 1828. With this historical statement of the existence of the laws for the disposition of the public lands within the Territories I do not entirely agree. But for the purposes of this case, the grant having been made subsequent to 1824 and prior to 1835, the statement is accurate. I am perfectly satisfied that this court was misled by the investigation made by the Government's agent in holding that the law of August 18, 1824, was in force in Mexico subsequent to the constitution of 1836, but there can be no question but that it was the only law in force in the Territories from the date of the repeal of the imperial colonization law on the 11th of April, 1823, to the date of the abolition of the constitution of 1824 by the provisional constitution of 1835.

It appears that the application was made by Antonio Chavez to the provincial deputation, and was by it referred to the political chief or governor, who made a verbal report upon the same, and thereupon, by a resolution of the deputation, title was ordered to be issued to him and he was ordered to be placed in possession of the property. The only possible authority that the provincial deputation had over the public lands was a supervisory power over the *ayuntamientos* and *alcaldes*, who were called upon to make allotments of lands for the purposes of building houses and cultivation within the boundaries of what are called *pueblo* and sometimes community grants.

If therefore we are to look to the law of August 18, 1824, for authority, the grant having been made in March, 1825, the possession claimed to have been given in April, 1825, it should appear that some regulation under the sixteenth article of the colonization law had been promulgated by the executive, but I do not believe that it has been contended, at any stage of this litigation, in California or here, that any action on the part of the executive branch of the Mexican Government looking to the disposition of the public lands in the Territories had ever been taken prior to November 21, 1828; therefore it must resolve itself to the fact that within the Territories between August 18, 1824, and November 21, 1828, there was no Territorial official or official body authorized to dispose of the public lands for the nation. It is true the executive could have authorized any one he saw proper to designate, but it fully appears that he did not exercise this power.

Under this colonization law and the regulations of 1828 the grant could not be sustained, because it was improperly initiated and emanated from a source that was prohibited from making it. This court, in both the Vallejo and Vigil cases, *supra*, took strong grounds in holding that in order for a title to be lawfully derived from the Republic of Mexico it must have been initiated by the governor and afterwards approved by the territorial deputation, and that initiating title before the territorial deputation, although the governor was president of that body and might have participated in its actions, and although that body may have asked his advice, still, as the law was a limitation upon the powers of

the governor, titles could not be recognized that at least did not reasonably conform to such regulations. It seems to me, from the recitals of the title papers, and bearing in mind the quantity of land claimed, about 138,000 acres, that the grant would have been in direct violation of the twelfth article of the law of August 18, 1824, which was, to some extent at least, a limitation upon the powers of the chief executive himself.

It was contended upon the trial by counsel for plaintiff that he was entitled to have the grant confirmed under the sixth section of the act creating the Court of Private Land Claims as an equitable claim; that Antonio Chavez had been in possession of the property for twenty-three years, and even if he were there merely by permission or under a license, still an occupation for that length of time would vest in him such an equity as would entitle him to a confirmation. In the first place, it is clearly shown by the testimony that Antonio Chavez never during his lifetime, nor did anyone for him prior to the treaty of Guadalupe Hidalgo, cultivate a single foot of the land, nor was it occupied by settlers or colonists under him so as to prevent the incursions of savages from the west as he promised, nor did he ever occupy it except as grazing ground and that in common with all the other people living at Socorro and Sevilleta. It appears that he herded his flocks upon it and all over the adjoining country, but he did not confine himself to his own grant nor did he keep others out. He built a few corrals over on the Rio Grande River and abandoned them whenever occasion required, but not a single promise that he made in his petition did he attempt to keep.

The first effort that was made to do anything by way of cultivation upon the grant was by Anastacio Garcia, his grantee, subsequent to the treaty of Guadalupe Hidalgo, and I desire to remark here that this court has repeatedly held that rights acquired by possession or otherwise subsequent to the treaty can not inure to the benefit or aggrandizement of the title at that time. The Government obligated itself by the treaty to protect private rights of property as they existed at that time; and lapse of time since the treaty, occupation, cultivation, improvement, and the investment of money are under our laws and not under Mexican law, and therefore can not inure to the benefit of a Spanish or Mexican land-grant title.

Under the laws of the Indies the vacant public lands were authorized to be used by owners of stock for grazing purposes. They were authorized to build their corrals on the same and erect their huts for the purpose of taking care of their flocks, and where they did so, and procured water near where they were grazing and had their corrals, they were protected in the use of the land; but it was never deemed and never has been contended that such use and occupation of the public domain, authorized by law specifically, ever vested in the occupant and user any interest, either legal or equitable, against the Crown. The occupation that Antonio Chavez made of this grant was only such occupation as was given to all the public domain lying along the Rio Grande and adjacent thereto, wherever grass and water could be obtained. Therefore I contend that under the testimony the use and occupation of this property by Antonio

Chavez and those claiming under him prior to the treaty complied neither with the letter nor spirit of the consideration which he was to give to the Mexican Government for a grant of 138,000 acres of land. It has been held by this court, and properly so, I think, that stock raising and grazing of land is very unsatisfactory evidence of possession—use and occupation such as was intended by the laws of the Indies and the laws of Mexico in consideration of grants for agriculture and other purposes. (See *De Arguello v. United States*, 18 How., 539; *United States v. Teshmaker*, 22 How., 392.)

A large amount of testimony was offered by the plaintiff and the Government with a view of fixing the location of the west boundary of this grant. It was contended by the plaintiff that the Ojo de la Jara (Willow Spring), called for as the west boundary, was about 23 miles west of the Rio Grande, up in the mountains, and as stated by one of the witnesses, over in the Navajo country, where, I may remark, a Mexican seldom ever went except in recent years. It was contended by the Government that the Ojo de la Jara mentioned in the act of possession was situate about in the middle of the grant as it is now surveyed, and is known to-day as the Ariveche Spring, the name being changed by reason of the Indians having killed a sheep-herder at that place. Considering that the petition was for the Arroyo San Lorenzo tract, and that this *arroyo* was the draw down which the Indians came when they came from the Navajo country on their raids, it seems to me, heeding the topography as well as the testimony, that the Ojo de la Jara,

afterwards called the Ariveche Spring, is the proper location for the west boundary of the grant, which would reduce the extent of this grant of about 138,000 acres to about 20,000 or 25,000 acres.

But I contend that the grant is void for want of authority on the part of the provincial deputation to make the same, and that there was no such occupation and cultivation of the property as would satisfy the requirements of the eighth subdivision of section 13 of the act of 1891, creating the Court of Private Land Claims, and that there are no equities in the title by reason of any cultivation or occupancy of the land by Antonio Chavez that would have authorized him to call upon the Mexican Government to recognize his title, and therefore he has no right to call upon this Government to do so.

I respectfully call the attention of the court to the opinion of a majority of the court, written by Mr. Justice Murray (Rec., 113), and with that opinion, and the observations I have made, I respectfully submit the case.

Respectfully submitted.

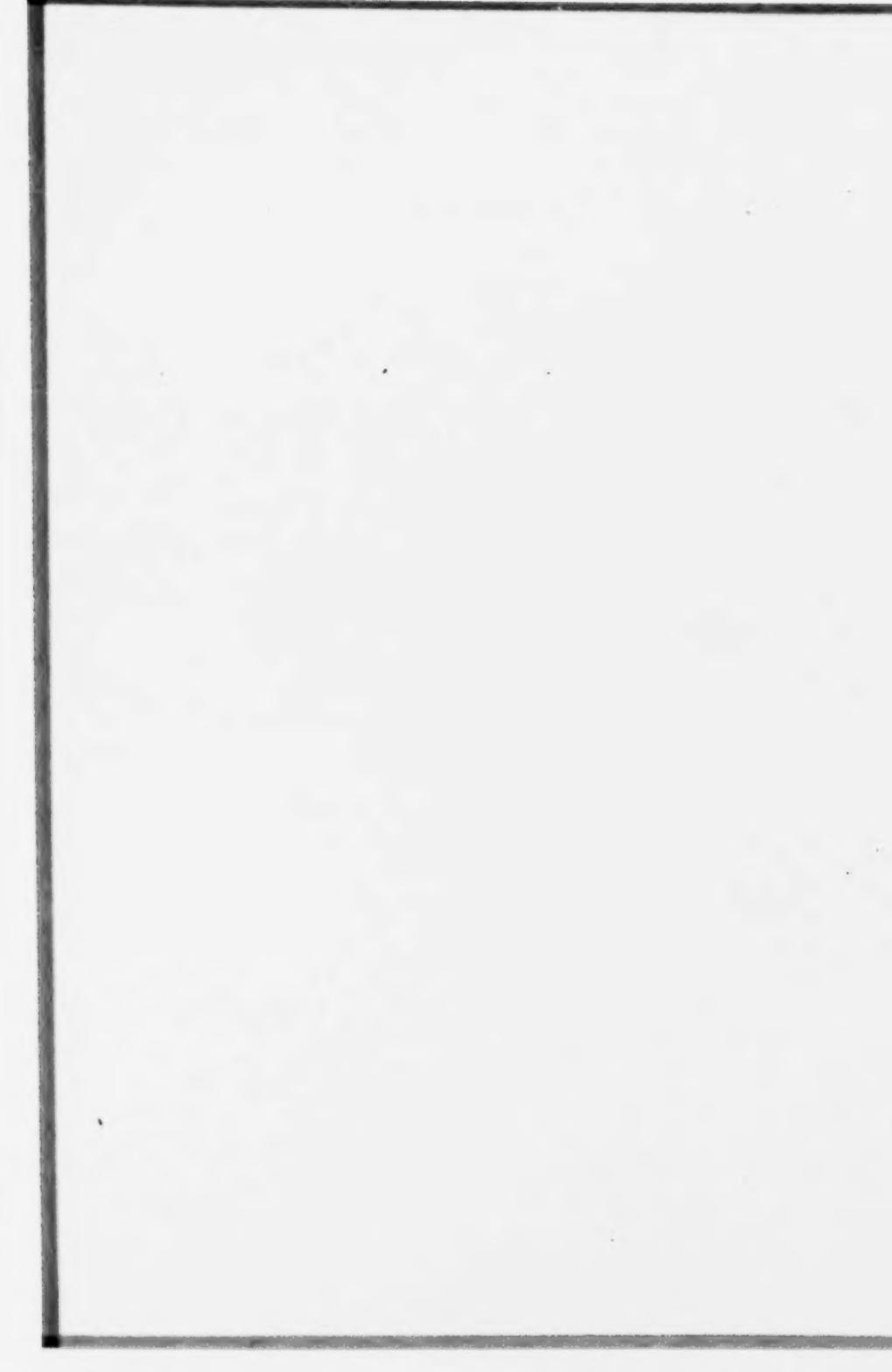
HOLMES CONRAD,

Solicitor-General.

MATTHEW G. REYNOLDS,

Special Assistant to the Attorney-General.





HAYES v. UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

No. 29. Argued January 28, 1897. — Decided May 23, 1898.

In the spring of the year 1825, when the grant of public land in controversy in this suit was made, the territorial deputation of New Mexico had no authority to make such grant.

THIS action was begun by appellant Hayes to obtain the confirmation of an alleged complete and perfect title to a tract of land of the area of 130,138.98 acres, situated in the county of Socorro, Territory of New Mexico.

In his petition Hayes averred that his alleged title was derived by mesne conveyances through one Antonio Chavez, to whom, on March 3, 1825, while the land was a part "of the public domain of the *Republic of Mexico*," a grant was made of the tract in question by the governor and departmental assembly "of the *Territory of New Mexico*." The exhibits attached to the petition, however, show, and counsel for the appellant admits in his brief, that the correct designations of the officials intended to be referred to were, respectively, the "political chief" and "territorial deputation."

Statement of the Case.¹

The *testimonio* furnished Chavez, as translated from the original Spanish, is reproduced in the margin.¹

¹ *Testimonio.*

Office of Secretary of the most excellent provincial deputation of the Territory of Santa Fé, of New Mexico.

Public session of the 16th day of February and 3d day of March, 1825.

I, the undersigned, secretary of the most excellent provincial deputation of the territory of Santa Fé, of New Mexico, do certify that in book second, wherein appears recorded the journal of the proceedings of its excellency, on page 41 of the book, it appears there was report made to said honorable body upon a petition, the tenor whereof, copied letter for letter, is as follows:

" MOST EXCELLENT SIR: I, Antonio Chavez, a republican citizen of the United Mexican States, and a resident of the town of our Lady of Belem, jurisdiction of this province of New Mexico, in the most ample and due legal form appear before your excellency and state, that finding myself very much crowded in the possession of my property and its appurtenances, as well in the pasturing of my stock as in the extension of agriculture, and desiring to remove to another place of greater capacity, with the honest purpose of enlarging both businesses, I apply to the superior wisdom of your excellency, to the end that, if such should be your high pleasure, you may deign to assign and adjudge me the tract called the San Lorenzo Arroyo, whose description and boundaries are: On the south the ranche of Pablo Garcia; on the north the little tableland of the Alamillo; on the east or west the Jara spring; and on the west or east the river known as the Del Norte; and the said land referred to in my petition being so uninviting, uncultivated, desolate and bleak, I earnestly believe, from your superior discernment, that your excellency, having in view and considering the matter, will have presented to you no obstacle to the granting, the adjudging and the assigning of the same to me; for, besides its contributing by cultivation and improvement to the benefit and security of the surrounding individuals, there will result to the province in general a great assistance and relief, inasmuch as at this point will be frustrated and prevented the incursions, ambushes and assaults of the enemies of our quietude and peace, who often invade and attack; and it will stop the exportation, deterioration and decrease of the little live stock they have left for the subsistence of the inhabitants and families of this needy province; wherefore I ask and pray that your excellency grant me what I pray for, whereby I will receive favor, grace and justice. I declare not to act with dissimulation, and as may be necessary, etc.

" ANTONIO CHAVEZ."

Session of the 16th day of February, 1825.

This document will pass to the honorable the political chief of this territory in order that, in continuation, he report whether the land that this

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The juridical act evidencing the delivery of possession was read in evidence from a duly certified copy of the record thereof made on the records of the probate court

party asks for pertains to that of the settlements of Socorro and Seviletta, and whether it is embraced in the same, and also whether, though it pertain to the settlements, it may, on account of their great extent, be granted to the petitioner without injury to a third party.

ANTONIO ORTIZ, *President.*
JOSE FRANCISCO BACA.
JOSE FRANCISCO ORTIZ.
PEDRO BAUTISTA PINO.
MATIAS ORTIZ.

JUAN BAUTISTA VIGIL, *Secretary.*

MOST EXCELLENT SIR: It is certain that the application of Antonio Chavez, a resident of Belem, refers to a part of the tract of Socorro and a portion of that which belongs to Seviletta, but it is also certain that on account of the great extent of both tracts and it being where their possessions separate, far from being injurious to those settlements, there results to them a benefit, for the reasons which I will proceed to state, as follows: The first and most important is the increase of the population to such a degree that it will afford means to the said settlements of Socorro and Seviletta by guarding a portion of the entrances and exits of the savages, who, though at peace, come to rob as those at war endeavor to harass the same settlements or those surrounding or near them. The second, that to the residents of the said new settlements there remain most ample lands for pastures, fields, uses and transits, so that the land which may be granted to Chavez will cause them not the least scarcity, as on another occasion that granted to Sabinal did not to Belem, or even to Seviletta itself, though it was an appurtenance of the first. The third, that making to the said Chavez the grant he asks would produce the emulation desired, so that the desirable vacant lands of the Bosque del Apache and San Pascual may be settled, which lands upon the one and the other bank present the greatest advantages to stock raisers and farmers, for, although they may have lands in the centre of other settlements, these from their age are full of locusts and worn out by constant cultivation. Fourth. That the petition of Antonio Chavez has in it more of necessity than of effectuation or covetousness, inasmuch as from that individual the Navajo tribe has taken the greater part of his live stock, and he requires a tract from which, through its productiveness, to re-establish himself from the losses he has suffered during the war with the said tribe. Fifth, that the slightest damage not resulting to Socorro and Seviletta from the grant which Chavez asks, it is very probable that the people there, for their poverty is well known, will have a place where they may get employment which may furnish them subsistence and which (like their neighbors, who are subject to the same, almost, deplorable condition) they lack.

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of the county of Socorro, and is also reproduced in the margin.¹

It was averred that after receiving possession as aforesaid,

¹ For all these reasons and many others, which I omit in order not to trouble your excellency, I am of opinion that the petition of Antonio Chavez may be acceded to at once, to which the people of the settlements aforesaid will make no objection, unless some peevish person or other enemy of the welfare of his fellow-creatures should unjustly persuade them with pretexts which never lack against that which is not wanted. This is what I can report to your excellency in compliance with what was resolved and in accordance with the practical knowledge I have in the matter. God preserve your excellency many years.

Santa Fé, 25th of February, 1825.

BARTOLOME BACA.

Session of the 3d day of March, 1825.

Book two of the journal of the most excellent territorial deputation of New Mexico, on the 43d page thereof, says the reading of two reports was proceeded with, which his excellency the political chief then presented upon the petitions of Antonio Chavez and Pedro Jose Perea for lands, and this honorable body being advised thereof resolved that there be adjudged to the two individuals the land they ask, filing in the office of the secretary of this honorable body the original expedients, as is provided, ordered and customary in similar cases and furnishing the parties interested the corresponding *testimonio*, which will serve them as title, and with which Antonio Chavez will present himself to the alcalde of Socorro that he may place him in possession, and Pedro Jose Perea to Juan Esteban Pino, esquire, for the same action.

This agrees faithfully and legally with the original from which, as due testimony and by direction of the most excellent territorial deputation of New Mexico, I have taken the present copy, of which there has been furnished the parties interested the corresponding *testimonio*, which will serve them as title.

Santa Fé, March 5, 1825.

JUAN BAUTISTA VIGIL, *Secretary.*

(Vigil's Rubric.)

Fees for all that has been done, twenty dollars.

I, Juan Francisco Baca, citizen and constitutional alcalde of the jurisdiction of San Miguel del Socorro, under the authority conferred upon me in the premises, proceeded on the twentieth of April, of the year one thousand eight hundred and twenty-five, to place in possession the citizen Anto. Chavez upon the land that he applies for; and in obedience to the order which, under date of the fifth of March of the said year, said Chavez, a resident of the district of Santa María de Belem, presented me, borne upon the grant he exhibited to me from the most excellent provincial deputation of this Territory of New Mexico, with a report of the political

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Chavez resided upon and cultivated the lands, and held and claimed the same as his private property in "fee simple absolute," free from all conditions or charges, "occupying the same openly, continually, notoriously, peaceably and exclusively" until his death, the date of which is not stated, when his widow succeeded to the title, and similarly possessed and occupied the tract until October 26, 1850, "when she duly conveyed all and singular the said tract of land upon a pecuniary consideration to Rafael Luna, Anastacio Garcia and Ramon Luna." Similar allegations as to possession, claim of ownership and cultivation were made concerning the subsequent conveyances in the claim of title.

It was averred that two reports upon the Chavez grant—the earlier favorable, the other unfavorable—were communicated to Congress by surveyors general for New Mexico; and it was further averred that prior to the making of the second report a committee of the House of Representatives reported

chief, which accompanies said grant, directing me to proceed to place Chavez in possession of the land he asks; in consideration whereof, I should proceed, and I did proceed, with two aldermen of this ayuntamiento, and two residents of this district, to whom I caused to be exhibited the order and the grant, the former being Anselmo Tafoya and Marcos Baca, and the latter being the citizens Jose Lonicio Silva and Augustin Trujillo, and as such alcalde did place the citizen Antonio Chavez in possession on the said land which he applies for, performing the ceremonies the laws require of me, assigning him for landmarks on the north, where the small tableland of the Alamillo begins; on the east, the del Norte River; on the south, a small forked cedar tree in the middle of the bend of the Pablo Garcia ranch, commonly so called, this little cedar being on the same side with the main road which is travelled toward said Socorro, on the side of the meadow; on the west, the spring known as the Jara spring. As alcalde aforesaid, in pursuance of direction, and in virtue and in form of law, I took the said Chavez by the hand and led him over his land, and he, in observance of the customary ceremonies, shouted, "Long endure the nation and our independence, and long live the sovereign," and he shouted and plucked up herbs, cast stones, and they praised the name of God, and by authority I left the party interested in peaceable possession, and I, under the authority which is conferred on me, authenticated and signed this, with two witnesses in my attendance, to which I certify on said day, month and year.

JUAN FRANCISCO BACA.

Attending: VINCENTE SILBA.

Attending: JULIAN ORCANA. (X.)

Counsel for Parties.

back to that body a bill to confirm the claim, with a recommendation that it pass as amended. What, if any, action was taken thereafter by Congress, is left to conjecture.

It was also averred that the grant had been correctly surveyed by the United States, under the direction of the surveyor general for New Mexico, and a map showing the extent and boundaries of the tract was filed with the petition. About 20,000 acres of the land lying in the eastern portion of the tract delineated on the map was formerly appurtenant to the towns of Sorocco and Seviletta, referred to in the report of the political chief set out in the *testimonio*.

In substance, the answer of the United States averred that the grant to Chavez was void for want of authority in the granting body, and, further, that if the grant was valid, the survey did not correctly show the western boundary, and the area of the tract was much less than was claimed in the petition.

The Government also denied that the land granted was possessed, cultivated and occupied by Chavez and those claiming under him, as averred in the petition. An answer was also filed on behalf of the Atlantic and Pacific Railway Company, in which it set up title under its charter to odd-numbered sections of land within the limits of the premises described in the petition, and prayed that the petition of plaintiff be dismissed as to such sections.

Testimony was taken in the cause, and, after hearing, the Court of Private Land Claims entered a decree rejecting the grant and dismissing the petition. An application for a rehearing having been refused, an appeal to this court was allowed. The transcript of record contains a stipulation on behalf of the United States, admitting that on the trial "the petitioner proved sufficient proprietary interest in the subject-matter of this litigation to enable him to present and prosecute his petition herein."

Mr. John H. Knaebel for appellant.

Mr. Matthew G. Reynolds for appellees. *Mr. Solicitor General* was on his brief.

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MR. JUSTICE WHITE, after making the foregoing statement, delivered the opinion of the court.

The main question presented by the contention of the parties is as to the power of the territorial deputation of New Mexico, in the spring of 1825, to make grants of public lands situated within the boundaries of that territory. We therefore pretermitted an examination of the controverted issues as to possession in order to first address ourselves to the fundamental legal question upon which the decision of the cause substantially depends. To understand the issue to be considered it is necessary to recall a few facts connected with the overthrow of the dominion of Spain in Mexico and the establishment in the latter country of an independent government.

After the successful revolution by which Mexico was severed from the control of the crown of Spain, and following the deposition of the Emperor Iturbide, a representative body was assembled, which was known as the constituent Congress of Mexico, and this body adopted, on January 31, 1824, what is termed the constitutive act. In that instrument New Mexico was recognized as a state of the federation, and in article 7 it was provided that the territories of the federation should be directly subject to the supreme power which, in article 9, was divided into legislative, executive and judicial. 1 White New Rocopilacion, p. 375; Reynolds' Spanish and Mexican Laws, p. 33.

Under the provisions of the constitutive act what has been styled the general constituent Congress was elected, and on July 6, 1824, it was decreed that "the province of New Mexico remains a territory of the federation." Reynolds, p. 117. Subsequently, on August 18, 1824, the same Congress adopted a general colonization law which, in articles 11 and 16, vested the supreme executive power with sole authority to regulate and control the disposition of public lands in the territories. On October 24, 1824, the general constituent Congress adopted a permanent constitution, which, in article 5, enumerated, as one of the parts of the federation, the "territory of Santa Fé of New Mexico." Reynolds, p. 124.

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It is manifest that the necessary effect of the decree of July 6, 1824, the colonization law of 1824, and of the constitution of October 24, 1824, was to deprive the officials of a territory of the power to dispose of the public lands, even though it be *arguendo* conceded that such power had theretofore been possessed by the officials who exercised authority within the area which was made a territory by the constitution.

But it is earnestly and elaborately argued that, as by the constitutive act New Mexico was recognized as a state of the federation, the Congress could not subsequently constitutionally reduce New Mexico to the rank of a mere territory, and that this court, in disposing of this case, must therefore disregard the Mexican constitution and hold that, as a state, New Mexico succeeded to the sovereignty and dominion of all the lands within its borders which formerly belonged to the king or crown of Spain, and, further, that we must in substance assume the acts of the officials who made the grant in question to have been those of state officials. The position thus taken, however, is so utterly in conflict with the facts and is so inconsistent with the case made by the petition as hardly to be entitled to serious notice.

Not only, as we have stated, had New Mexico been declared a territory prior to the passage of the colonization law of August 18, 1824, but such status has been reiterated in the fifth article of the Constitution of October, 24, 1824. Moreover, it is averred in the petition that the grant for which confirmation is sought was made by the "Republic of Mexico," through the territorial deputation of New Mexico, and it is specifically alleged that the land granted was prior to the making of the grant part of the public domain of the republic. And the muniments of title to the original grantee, put in evidence on behalf of the petitioner, support these averments, and clearly show a recognition of and execution by New Mexico of its status as a territory imposed by the decree of July 6, 1824, and the constitution of the following October. Thus, in the preamble of the *testimonio*, it is recited that the official who certifies to it, his certificate being

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dated March 5, 1825, is "secretary of the most excellent provincial deputation of the territory of Santa Fé of New Mexico," and it will be remembered that this was the exact designation of the territory employed in the Constitution of October 4, 1824. On February 16, 1825, in referring the petition to the political chief for report, the territorial deputation alluded to that official as the political chief of the "territory." Again, in the extract from the journal of March 3, 1825, the record is referred to as "book two of the journal of the most excellent territorial deputation of New Mexico;" and in the juridical act the deputation is styled the "provincial deputation of this territory of New Mexico."

In this condition of the record there can be no reason suggested for our entering upon an inquiry as to whether New Mexico might, in 1825, have rightfully insisted that it was a state and not a territory of the federation, nor are we at all concerned with the question as to what, if any, rights in public lands were vested in a Mexican state in the year mentioned. The grant upon which, if at all, petitioner was entitled to relief in the court below was not made by state officials, did not purport to be a grant from a state, and was manifestly intended not to be such.

The lands covered by the grant being public lands of the nation, and not being subject to grant by the authorities of the territory of New Mexico, it follows that the title upon which the claimant relies vested no right in him and was clearly not within the purview of the act of Congress conferring jurisdiction on the Court of Private Land Claims, for obviously it cannot be in reason held that a title to land derived from a territory which the territorial authorities did not own, over which they had no power of disposition, was regularly derived from either Spain or Mexico or a state of the Mexican nation.

The contentions by which the plaintiff in error seeks to avoid the controlling effect of the foregoing considerations are as follows: 1st. That the territorial government of New Mexico had power to dispose of the public lands of the nation because it is not affirmatively shown that the colonization law

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of the 18th of August, 1824, had been promulgated in New Mexico at the time the grant in question was made. 2d. Because even if it be conceded that the authorities of the territory were without inherent legal power to have made the grant, nevertheless there is a presumption that they were authorized to make it by the chief executive power of the Mexican nation, or that their action in making it was subsequently ratified by the like authority. 3d. That any defect in the title of the plaintiff in error is barred by prescription. 4th. That whatever may be the want of title in the plaintiff in error as to all the lands embraced in the grant except the portions thereof taken from lands appurtenant to the towns of Socorro and Sevilleta, as to such lands there clearly is no want of title, because it is certain that as to such lands there was power vested in the authorities of the territory to make grant of the same, and hence, at least to the extent that lands of this character were embraced within the grant, there should be a confirmation. We will consider these contentions in the order stated.

1st. Whilst it is true the record does not affirmatively show that the colonization law of 1824 had been promulgated in the territory of New Mexico at the time the grant in question was made, it by the strongest implication gives rise to the inference that it had been. Besides, the legal presumption of promulgation arises in the absence of proof to the contrary. The granting papers show on their face that the constitution adopted subsequent to the colonization law had been promulgated in New Mexico, and the inference of fact is fairly deducible that such also was the case as to the earlier law of 1824. The constitution of Mexico in article 16, paragraph 13, made it the duty "of the supreme executive power to cause to be published, circulated and observed, the laws and the general constitution." 1 White New Rec. 398. In the absence of proof the presumption of *omnia rita* creates the inference that the duty was performed. But the question of promulgation is an immaterial one. By the constitution New Mexico was a territory. The grant itself, as we have seen, discloses this to be the fact, and describes the lands as

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those of the nation. Whatever may be the foundation for the claim that the states of the Mexican nation in virtue of their autonomy succeeded to the right of disposition of the public lands of the nation, as to which we express no opinion, clearly such power did not obtain as to the territories, and therefore whether or not the colonization law was promulgated becomes irrelevant, since the imposing of a territorial status on New Mexico by the constitution operated to restrict that territory to such powers alone as a territory might lawfully exercise, and therefore had the effect of depriving it of the power to alienate the national domain.

2d. The claim that because by the colonization law of 1824, the chief executive was authorized to dispose of the public domain, and by the regulation of 1828, adopted to carry out the law of 1824, the executive delegated to certain territorial officers power to grant lands, therefore the presumption must be deduced that the act of the territory in granting the public lands in question was either sanctioned by the executive at the time of the grant or at a date subsequent thereto, was duly ratified by such authority, is without merit.

By the first subdivision of the thirteenth section of the act creating the Court of Private Land Claims that court and this court on appeal are expressly prohibited from allowing any claim under the act "that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land." This manifest limitation upon the power of the court in passing upon the validity of an alleged complete grant requires that the court shall not adjudge in favor of validity unless satisfied from the inherent evidence contained in the grant, or otherwise, of an essential prerequisite to validity, viz., the authority of the granting officer or body to convey the public domain.

In this respect the act of 1891 is materially different from the statutes construed in the *Arredondo case*, 6 Pet. 691. That case concerned a grant by the king of Spain of land in Florida. The statutes under which the court exercised juris-

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diction enjoined, among other things, as guides or rules of decision in passing upon a claim, "the stipulations of any treaty, and proceedings under the same; the several acts of Congress in relation thereto;" etc. In view of provisions of this character, the court, beginning on page 722, devoted much attention to the question, "Whether the several acts of Congress relating to Spanish grants do not give this grant, and all others which are complete and perfect in their forms, 'legally and fully executed,' a greater and more conclusive effect as evidence of a grant by proper authority." Reviewing such acts, the conclusion was reached that it was the intention of Congress that a claimant should not be required to offer proof as to the authority of the officials executing a public grant, but that the court should, in deciding upon a claim, assume as a settled principle that a public grant is to be taken as evidence that it issued by lawful authority. (P. 729.) And in the *Peralta case*, 19 How. 343, in a proceeding under the act of March 3, 1851, relating to lands in California, the doctrine of the *Arredondo case* was applied.

But in the act of 1891 the court is required to be satisfied not simply as to the regularity *in form*, but it is made essential before a grant can be held legally valid that it must appear that the title was "lawfully and regularly *derived*," which imports that the court must be satisfied, from all the evidence, that the official body or person assuming to grant was vested with authority, or that the exercise of power, if unwarranted, was subsequently lawfully ratified.

Controlled, as we are, by the grant of power conferred by the act of Congress, we are unable when the record discloses that the grant was not "lawfully and regularly derived . . . from any state of the Republic of Mexico having authority to make grants," to hold that it should nevertheless be confirmed because, although the proof convincingly shows that the grant does not conform to the requirements of the act of Congress, the grant yet must be held valid because of a supposed legal presumption. Indeed, if a legal presumption on the subject could be indulged in, the granting papers would

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not authorize it to be invoked. They make no reference whatever to the colonization law, contain no allusion to the quantity of land contained in the tract granted, and if its area was as now claimed the tract contained nearly three times the maximum quantity of land designated in the twelfth article of the colonization law of 1824, or which was authorized by the regulations of 1828. If the grant made in 1825 could be measured by the power for the first time conferred on territorial officers in 1828, such an unreasonable and retroactive rule would not help the grant. It was not in accord with the regulations of 1828, and hence finds no support from those regulations. *United States v. Vigil*, 13 Wall. 449, 452. Further, while it is reasonable to presume that any order or decree of the supreme executive of Mexico conferring authority to alienate the territorial lands or ratifying an unauthorized grant to the extent authorized by law was made matter of official record, the petition does not aver, and the grant does not recite, nor was there any evidence introduced showing a prior authorization or subsequent ratification. In fact, it was not even shown that at or about the time of the grant the territorial deputation habitually assumed to grant lands, particularly under circumstances which would justify an inference that the supreme executive was informed of such procedure.

3d. The contention that the land has been acquired by prescription is based upon the theory that the time for prescription ran against the government of Mexico, and to support this claim it is said that under the Spanish law, whilst prescription did not run against the king on subjects relating to his prerogative or inherent governmental authority, that with reference to the mere ownership of the public domain, the king, the Spanish nation and the national government of Mexico as their successor, were subject to the bar of the statute of limitations like any private individual. But a decision as to the soundness of this proposition is wholly unnecessary for the purposes of this cause. By the Spanish law prescription was divided into ordinary and extraordinary. The term of the ordinary prescription as to immovable prop-

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erty was ten years, (Partidas 3, Law 18, Title 29,) and the term for immovable property by the extraordinary prescription was thirty years. (Partidas 3, Law 16, Title 29.) But the requisites for the ordinary prescription were, 1st, good faith; 2d, just title; 3d, continued and uninterrupted possession for the time required by law. (Hall, p. 30; 2 White, 83; Orozoco, Legislation and Jurisprudence on Public Lands, Mexico, 1895, vol. 1, p. 300.) The just title required did not include a title which was absolutely void and derived from one who by operation of law had no power whatever to dispose of the property. (Partidas 3, Law 11, Title 20.) In speaking on these provisions of the Partidas, Schmidt, in his Civil Law of Spain and Mexico (p. 290), says: "It is also necessary that the contract by which the property was acquired should be a valid contract. Hence, a thing acquired by purchase, donation or any other contract made with an insane person cannot be acquired by prescription; nor property obtained from a minor or any other mode which the law holds invalid; but even in such cases the prescription of thirty years applies as is explained in paragraph 1 of the next section."

The provisions in the Partidas as to the distinction between the ordinary and the extraordinary prescription and the requirements essential to the former were substantially common to the civil law countries. Their practical equivalent was found in the Roman law. L. 24, C. *de rei Vindicat.*, L. 4, C. *de præscript. Longi temp.* They obtained in the intermediary law. They were reproduced in the Code Napoleon, Art. 2265. They are also adopted in the Louisiana Code. La. C. C. 3478 *et seq.* to 3484. Under all these systems, in interpreting the meaning of what is meant by just title, it has invariably been held that they do not embrace a title made by one who by operation of law had absolutely no power to convey. In speaking on this subject in *Francoise v. Delaronde*, 8 Martin, (La.) 619, where it was claimed that a sale, made at a time when the Spanish law was dominant, of a minor's property by a tutor, when by law the tutor had no authority to sell, could be the basis of the ten years' prescription because the purchaser

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was in good faith and the deed was a "just title," the court, speaking through Matthews, J., said:

"From the order of the judge, it is presumable that the defendant believed that he gained a just and legal title to the lot, under the act of sale, supposing that all the formalities required by law had been complied with. In this he mistook the law: for the manner of sale and forms required by law were not pursued; *et nunquam in usucaptionibus, juris error possessori prodest.* ff. eod. lib. 3, 31.

"However much the commentators of the Roman law have differed the one from the other, and the same person from himself at different periods, on the subject of mistakes of law, they seem to agree in this, that *juris error* is never a good foundation for acquiring property. 2 Evans' Pothier, 409, d'Aguesseau's dissertation, 2."

Pothier, in his treatise on Prescription (No. 85), says:

"In order that a possessor can acquire by prescription the thing which he possesses (speaking of course of the short or ordinary prescription) it is essential that the title from which his possession proceeds should be a valid title. If his title is void, a void title being no title, the possession which proceeds from it is a possession without title which cannot operate prescription."

In referring to the opinion of d'Argentrée, that a title absolutely void for want of legal power could not be the basis of a ten-year prescription, Troplong, in his treatise on Prescription, says, vol. 2, p. 905:

"This truth is so palpable that it cannot be contested. It has been acceded to by all the writers, whether civilist or canonist. It stands out plainly in the exposition of the reasons for the adoption of the title of prescription (in the Code Napoleon) given by M. Bigot de Preameneu. No one, said he, can believe in good faith that he possesses as owner, if he has not a just title; that is to say, a title which would in its nature be translatable of the right of property, *and which is otherwise valid.* It would not be valid if it was contrary to law, and even although it be void only for a defect of legal form, it could not authorize prescription."

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And this reasoning at once suggests the necessary relation between the requirement of good faith and that of just title. In the Roman law the latter was substantially a mere resultant of the former. *Marcadé Prescription*, p. 194; *Ducaurroy Inst.*, t. 1, p. 382 *et seq.*

Where the want of just title is the result of a legal incapacity on the part of the seller, such a cause not only operates to render the title not just in legal intendment, but deprives the contract of the essential ingredients of legal good faith. "If then," says *Marcadé* (p. 201), "believing your vendor to be the owner when he was not, you knew he was a minor, an interdict, or otherwise incapable of selling, you could not then buy from him with the conviction that the contract was true and regular, and you could not therefore prescribe by ten years." . . .

But here the deed on its face purported to be a conveyance of the domain of the nation by a territory thereof. The want of power in the territory was the resultant of the constitution and laws of the nation, and was therefore an incapacity by operation of law, with knowledge of which the grantee was chargeable. Thus, not only did the just title not arise, but the essential element of legal good faith was wanting. And these twofold consequences, that is, want of legal good faith and the absence of just title which necessarily arise where a sale is made of the public domain, by one wholly without authority to make it, is clearly stated by *Orozoco*:

"The title is lacking, because a void title cannot be alleged nor be made to serve to prove the just cause of possession. *Quod nullum est nullum producit effectum.* For, as *Pothier* says, 'in order that a possessor may acquire, by prescription, the thing he possesses, it is indispensable that the title from which the possession proceeds be a legitimate title.' If his title is void, a void title cannot be considered a title, and the possession that proceeds from the same is a possession without title, which cannot produce prescription.

"The just cause is lacking, because this is nothing else than a proper title to transfer dominion, and a void title does not transfer it.

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"Finally, good faith is lacking, because this is based not on an error of fact, which may be excusable in us, but we can never take advantage of error as against law. *Nunquam in usucaptionibus juris error possessori prodest. Juris ignorantiam in usucapione negatur prodesse: facti vero ignorantiam prodesse constat.*"

As the ordinary prescription could not apply, and as the necessary time for the extraordinary prescription under the Spanish law had not run at the time of the acquisition of the territory by the United States, and as, clearly, whatever may have been the rule as to the operation of prescription against the Spanish or Mexican governments, it did not run after the treaty against the United States, it follows that the claim of prescription is without foundation. We have discussed this question upon the hypothesis that the record showed such possession prior to the cession to the United States as would have authorized the running of prescription if there had been good faith and a just title, but because we have done this we must not be considered as so deciding or even so intimating.

4th. Nor is there merit in a contention made with respect to the portions of the land granted which were carved out of lands appurtenant to the towns of Socorro and Sevilleta. It is asserted that, at least as to these lands, the power to grant existed in the territorial deputation. This claim proceeds on the hypothesis that a land law of the Spanish Cortes of January 4, 1813, (Reynolds, p. 83,) was in force in New Mexico in March, 1825. This law looked to the reduction to private ownership of "all public or crown lands, and those of the municipal domains and revenues, . . . except the necessary commons of the town."

One half of the public and crown lands of the monarchy, excepting town commons, were reserved, in article VI, for *lucrative alienation*; while provision was made in clauses IX *et seq.* for disposition of the remaining public and crown lands, or of the farming lands of the municipal domain, in small tracts, the grants to be made by the common councils of such towns, subject to the approval of the provincial deputation. While counsel contends that this law empowered the legis-

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lative bodies of the province, known as the provincial deputations, to dispose of the surplus lands of towns, that law does not expressly confer such authority. Article 4, which is relied upon, merely requires the deputations to make report to the Cortes as to the time and manner of carrying out the provisions of the law, to aid the Cortes in deciding what is best. Besides, this law of 1813 was held in *United States v. Vallejo*, 1 Black, 541, to be inoperative in Mexico after the enactment of the colonization law of 1824, and we are clearly of opinion that, as applied to a Territory, if entitled to the construction claimed for it by counsel for plaintiff in error, it was obviously repugnant to and inconsistent with the supreme power over the Territories reserved to the national government, particularly with the sweeping powers over lands in the Territories vested by the law of 1824 in the supreme executive power of the republic.

Moreover, if the town lands could have been granted under the supposed authority of the law of the Cortes of January 4, 1813, that law treated such lands as in the category of crown lands. The granting papers in evidence also warrant the inference that the lands were so regarded. Even then, though they were appurtenant to towns, they were subject to the disposition of the Spanish crown as part of the public domain, and authority to sell was not within the scope of territorial authority. *United States v. Sante Fé*, 165 U. S. 675, 708; *United States v. Sandoval*, 167 U. S. 278; *Rio Arriba Land and Cattle Co. v. United States*, 167 U. S. 298. Lands of this character being a part of the public domain they were subject necessarily to the authority of the Mexican nation, and the territorial officers were as absolutely void of right to sell them as they were to sell any other part of the public lands of the nation.

Of course the fact, if it be such, that the present claimant was a *bona fide* purchaser in good faith, who, in reliance upon the action of Congress with reference to similar grants, expended large sums of money on the faith of the validity of the title which he supposed he had acquired, cannot influence the action of this court. As said in *Crespin v. United States*, 168 U. S. 208, 218:

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"If there be any hardship to the petitioners in the rejection of this grant, they must apply for relief to another department of the Government. We are bound by the language of the act creating the Court of Private Land Claims."

The decree of the court below is

Affirmed.

MR. JUSTICE SHIRAS dissented.

MR. JUSTICE MCKENNA, not having heard the argument, took no part in the decision.